

1509/187
THE WHOLE OF THE
P R O C E E D I N G S

AT THE
ASSIZES AT SHREWSBURY,

ON FRIDAY AUGUST THE SIXTH, 1784.

IN THE CAUSE OF
THE KING ON THE PROSECUTION OF
WILLIAM JONES, ATTORNEY AT LAW,

AGAINST
THE REV. WILLIAM DAVIES SHIPLEY,
DEAN OF ST. ASAPH.

FOR A
L I B E L.

BEFORE
THE HON. FRANCIS BULLER, ESQ.
ONE OF THE JUDGES OF HIS MAJESTY'S COURT OF KING'S
BENCH.

TAKEN IN SHORTHAND BY WILLIAM BLANCHARD, No. 4.
DEAN-STREET, FETTER-LANE, LONDON.

N. B. THE GREATEST PART OF THE ARGUMENTS OF
THE COUNSEL REVISED BY THEMSELVES.

D U B L I N:

PRINTED BY P. BYRNE, No. 35, COLLEGE-GREEN.

M,DCC,LXXXIV.



WILLIAM BLANCHARD, of Dean Street, Fetter-Lane, London, Gentleman, maketh oath and saith, That in the proceedings hereunto annexed, signed by him, purporting to be a state of the proceedings had at the Assizes held at Shrewsbury, in the County of Salop, before the Honourable Francis Buller, Esq; one of his Majesty's justices of the Court of King's-Bench, on Friday the sixth day of August, one thousand seven hundred and eighty four, in the cause of the King, on the prosecution of William Jones against William Davies Shipley, Dean of St. Asaph, to the best of this Deponent's knowledge and belief, there is a faithful and true account of the evidence given by the witnesses; Mr. Justice Buller's charge to the Jury, and the subsequent proceedings after the Verdict was first delivered by the Foreman; he having attended in court at the time above mentioned, and taken minutes of the cause in short hand.

WM. BLANCHARD.

Sworn, at Guildhall, London, }
3d September, 1784, before me }

WM. PLOMER.

INDICTMENT.

In April, 1783, at the GREAT SESSIONS, held at WREXHAM, for the COUNTY of DENBIGH, the following BILL of INDICTMENT was found against the DEAN of ST. ASAPH, to which he pleaded NOT GUILTY.

DENBIGH, } **P**LEAS at Wrexham, in the County of Denbigh, before the Honourable Lloyd Kenyon, Chief Justice; and the Honourable Daines Barrington, the other Justice of our Lord the King, of his Great Session of the County-aforesaid, held at Wrexham, in the said County, on Wednesday the Twenty-seventh day of August, in the Twenty-third Year of the Reign of our Sovereign Lord George the Third, by the Grace of God, of Great Britain, France, and Ireland, King Defender of the Faith, and soforth. 1783. **MORGAN.**

DENBIGHSHIRE, (to wit) It hath been found, by a certain inquisition of the county, that WILLIAM DAVIES SHIPLEY, late of Llannoreck Park, in the parish of Henllan, in the county of Denbigh, Clerk, being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse, amongst the subjects of this realm, discontents, jealousies, and suspicions of our Lord the King, and his Government; and disaffection and disloyalty to the person and government of our Lord the now King; and to raise very dangerous seditions and tumults within this kingdom; and to draw the government of this kingdom into great scandal, infamy, and disgrace; and to incite the subjects of our Lord the King to attempt,

by force and violence, and with arms, to make alterations in the government, state, and constitution of this kingdom, on the first day of April, in the twenty-third year of the reign of our Sovereign Lord George the Third, now King of Great Britain, and so forth, at Wrexham, in the county of Denbigh aforesaid; wickedly and seditiously published, and caused and procured to be published, a certain false, wicked, malicious, seditious, and scandalous libel, of and concerning our said Lord the King, and the government of this realm, in the form of a supposed dialogue between a supposed gentleman and a supposed farmer, wherein the part of the supposed gentleman, in the supposed dialogue, is denoted by the letter G.; and the part of the supposed farmer, in such supposed dialogue, is denoted by the letter F.; entitled, "The Principles of Government, in a Dialogue between a Gentleman and a Farmer." In which said libel is contained, the false, wicked, malicious, seditious, and scandalous matters following, (to wit) F. (meaning the said supposed farmer) Why should humble men like me (meaning the said supposed farmer) sign or set marks to petitions of this nature? It is better for us farmers to mind our husbandry, and leave what we cannot comprehend to the King and Parliament. G. (meaning the said supposed gentleman) You (meaning the said supposed farmer) can comprehend more than you (meaning the said supposed farmer) imagine, and, as a free member of a free state, have higher things to mind than you (meaning the said supposed farmer) may conceive. F. (meaning the said supposed farmer) If, by free, you (meaning the said supposed gentleman) mean out of prison, I (meaning the said supposed farmer) hope to continue so as long as I (meaning the said supposed farmer) can pay my (meaning the said supposed farmer's) rent to the squire's bailiff; but what is meant by a free state? G. (meaning the said supposed gentleman) Tell me (meaning the said supposed gentleman) first, what is meant by a club, in the village, of which I (meaning the said supposed gentleman) know you (meaning the said supposed farmer) to be a member? F. (meaning the said supposed farmer) It is an assembly of men who meet after work every



every Saturday, to be merry and happy for a few hours in the week. G. (meaning the said supposed gentleman) Have you (meaning the said supposed farmer) no other object but mirth? F. (meaning the said supposed Farmer) Yes, we have a box into which we contribute equally from our monthly or weekly savings, and out of which any members of the club are to be relieved in sickness or poverty, for the parish officers are so cruel and insolent, that it were better to starve than apply to them (meaning parish officers) for relief. G. (meaning the said supposed gentleman) Did they, (meaning parish officers) or the squire, or the parson, or altogether, compel you (meaning the said supposed farmer, and the several persons composing such club) to form this society? F. (meaning the said supposed farmer) Oh! no; we (meaning the said club) formed it by our own choice. G. (meaning the said supposed gentleman) You (meaning the said club) did right; but have you (meaning the said club) not some head, or president, of your club? F. (meaning the said supposed farmer) The master for each night is chosen by all the company present the week before. G. (meaning the said supposed gentleman) Does he (meaning such master) make laws to bind you (meaning the said club) in case of ill temper or misbehaviour? F. (meaning the said supposed farmer) He (meaning such master) make laws! He (meaning such master) bind us! (meaning the said club) no; we (meaning the said club) have all agreed to a set of equal rules, which are signed by every new comer, and were written in a strange hand by young Spelman, the lawyer's clerk, whose uncle is a member. G. (meaning the said supposed gentleman) What should you (meaning the said club) do if any one member were to insist on becoming perpetual master, and on altering your (meaning the said club's) rules at his (meaning such one member's) arbitrary will and pleasure? F. (meaning the said supposed farmer) We (meaning the said club) should expel him, (meaning such one member). G. (meaning the said supposed gentleman) What if he (meaning such one member) were to bring a serjeant's guard, when the militia were quartered in your neighbourhood, and insist upon your (meaning such club's) obeying him? (meaning such one member). F. (meaning the said supposed farmer) We (meaning

(meaning such club) should resist if we (meaning the said club) could, if not, the society would be broken up. G. (meaning the said supposed gentleman) Suppose that, with his (meaning such one member's) (serjeant's guard, he (meaning such one member) were to take the money out of the box, or out of your (meaning the members of the said club's) pockets. F. (meaning the said supposed farmer) Would not that be a robbery? G. (meaning the said supposed gentleman) I (meaning the said supposed gentleman) am seeking information from you, (meaning the said supposed farmer). How should you (meaning the said club) act on such an occasion? F. (meaning the said supposed farmer) We (meaning the said club) should submit, perhaps, at that time, but should afterwards try to apprehend the robbers. G. (meaning the said supposed gentleman) What if you (meaning the said club) could not apprehend them? F. (meaning the said supposed farmer) We (meaning the said club) might kill them, I (meaning the said supposed farmer) should think, and *if the King (meaning the said Lord the King)* would not pardon us (meaning the said club) God would. G. (meaning the said supposed gentleman) How could you (meaning the said club) either apprehend them, (meaning the said robbers) or, if they (meaning the said robbers) resisted, kill them without a sufficient force in your (meaning the said club's) own hands. F. (meaning the said supposed farmer) Oh! we (meaning the said club) are all good players at single stick, and each of us (meaning the said club) has a stout cudgel, or a quarter-staff, in the corner of his room. G. (meaning the said supposed gentleman) Suppose that a few of the club were to domineer over the rest, and insist upon making laws for them? (meaning the rest of the said club). F. (meaning the said supposed farmer) We (meaning the rest of the said club) must take the same course, except that it would be easier to restrain one man than a number; but we (meaning the rest of the said club) should be the majority, with justice on our side. G. (Meaning the said supposed gentleman) A word or two on another head: some of you, (meaning the said club) I (meaning the said supposed gentleman) presume, are no great accomptants? F. (meaning the said supposed farmer) Few of us (meaning the said club) understand

derstand accounts; but we (meaning the said club) trust old Lilly, the schoolmaster, whom we (meaning the said club) believe to be an honest man, and he keeps the key of our (meaning the said club's) box. G. (meaning the said supposed gentleman) If your (meaning the said club's) money should, in time, amount to a large sum, it might not perhaps be safe to keep it (meaning such large sum) at his (meaning Lilly's) house, or in any private house? F. (meaning the said supposed farmer) Where else should we (meaning the said club) keep it? (meaning such large sum). G. (meaning the said supposed gentleman) You (meaning the said club) might chuse to put it (meaning such money) into the funds, or to lend it to the 'squire, who has lost so much lately at Newmarket, taking his bond, or some of his fields, as your (meaning the said club's) security for payment, with interest. F. (meaning the said supposed farmer) We (meaning the said club) must, in that case, confide in young Spelman, who will soon set up for himself, and, if a lawyer can be honest, will he an honest lawyer. G. (meaning the said supposed gentleman) What power do you (meaning the said club) give to Lilly, or should you (meaning the said club) give to Spelman in the case supposed? F. (meaning the said supposed farmer) No power; we (meaning the said club) should give them both (meaning Lilly and Spelman) a due allowance for their trouble, and should expect a faithful account of all they had done for us, (meaning the said club). G. (meaning the said supposed gentleman) Honest men may change their nature; what if both, or either of them (meaning Lilly and Spelman) were to deceive you? (meaning the said club). F. (meaning the said supposed farmer) We (meaning the said club) should remove them, (meaning Lilly and Spelman) put our (meaning the said club's) trust in better men, and try to repair our (meaning the said club's) loss. G. (meaning the said supposed gentleman) Did it never occur to you (meaning the said supposed farmer) that every state or nation was only a great club? F. (meaning the said supposed farmer) Nothing ever occurred to me (meaning himself the said supposed farmer) on the subject, for I (meaning himself the said supposed farmer) never thought about it. G. (meaning the said supposed gentleman)

gentleman) Though you (meaning the said supposed farmer) never thought before on the subject, yet you (meaning the said supposed farmer may be able to tell me, (meaning the said supposed gentleman) why you (meaning the said supposed farmer) suppose men to have assembled, and to have formed nations, communities, or states, which all mean the same thing? F. (meaning the said supposed farmer) In order, I (meaning himself the said supposed farmer) should imagine, to be as happy as they (meaning men) can while they (meaning men) live. G. (meaning the said supposed gentleman) By happy, do you (meaning the said supposed farmer) mean merry only? F. (meaning the said supposed farmer) To be as merry as they (meaning men) can, without hurting themselves or their neighbours; but chiefly to secure themselves from danger, and to relieve their wants. G. (meaning the said supposed gentleman) Do you (meaning the said supposed farmer) believe that any King or Emperor compelled them (meaning men) so to associate? F. (meaning the said supposed farmer) How could one man compel a multitude? A king or an emperor, I (meaning himself the said supposed farmer) presume, is not born with a hundred hands. G. (meaning the said supposed gentleman) When a prince of the blood shall, in any country, be so distinguished by nature, I (meaning himself the said supposed gentleman) shall then, and then only, conceive him (meaning such prince) to be a greater man than you, (meaning the said supposed farmer); but might not an army, with a king or general at their head, have compelled them (meaning men) to assemble? F. (meaning the said supposed farmer) Yes; but the army must have been formed by their own choice; one man, or a few, can never govern many without their consent. G. (meaning the said supposed gentleman) Suppose, however, that a multitude of men assembled in a town or city, were to chuse a king or governor, might they (meaning such multitude) not give him (meaning such king or governor) high power and authority? F. (meaning the said supposed farmer) To be sure; but they (meaning such multitude) would never be so mad, I (meaning himself the said supposed farmer) hope, as to give him (meaning such king or governor) a power of making their
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meaning such multitude's) laws. G. (meaning the said supposed gentleman) Who else should make them? (meaning laws). F. (meaning the said supposed farmer) The whole nation or people. G. (meaning the said supposed gentleman) What if they (meaning nation or people) disagreed? F. (meaning the said supposed farmer) The opinion of the greater number, as in our village clubs, must be taken and prevail. G. (meaning the said supposed gentleman) What could be done if the society were so large that all could not meet in the same place? F. (meaning the said supposed farmer) A greater number must chuse a less. G. (meaning the said supposed gentleman) Who should be the chusers? F. (meaning the said supposed farmer) All who are not upon the parish. In our club (meaning the said club) if a man asks relief of the overseer he ceases to be one of us, (meaning the said club) because he (meaning the said man) must depend on the overseer. G. (meaning the said supposed gentleman) Could not a few men, one in seven for instance, chuse the assembly of law-makers, as well as a large number? F. (meaning the said supposed farmer) As conveniently perhaps; but I (meaning the said supposed farmer) would not suffer any man to chuse another who was to make laws by which my (meaning his the said supposed farmer's) money or my (meaning his the said supposed farmer's) life might be taken from me, (meaning the said supposed farmer). G. (meaning the said supposed gentleman) Have you (meaning the said supposed farmer) a freehold in any county of forty shillings a year? F. (meaning the said supposed farmer) I (meaning the said supposed farmer) have nothing in the world but my (meaning the said supposed farmer's) cattle, implements of husbandry, and household goods, together with my (meaning his the said supposed farmer's) farm, for which I (meaning himself the said supposed farmer) pay a fixed rent to the 'squire. G. (meaning the said supposed gentleman) Have you (meaning the said supposed farmer) a vote in any city or borough? F. (meaning the said supposed farmer) I (meaning himself the said supposed farmer) have no vote at all, but am able, by my (meaning his the said supposed farmer's) honest labour to support my (meaning his the said supposed farmer's) wife and four

children; and whilst I (meaning himself the said supposed farmer) act honestly, I (meaning himself the said supposed farmer) may defy the laws? G. (meaning the said supposed gentleman) Can you (meaning the said supposed farmer) be ignorant that the parliament to which members are sent by this county, and by the next market-town, have power to make new laws by which you (meaning the said supposed farmer) and your (meaning the said supposed farmer's) family may be stripped of your (meaning his the said supposed farmer's and his family's) goods, thrown into prison, and even deprived of life? F. (meaning the said supposed farmer) A dreadful power! I (meaning himself the said supposed farmer) never made enquiries, having business of my (meaning his the said supposed farmer's) own, concerning the business of parliament, but imagined that the laws had been fixed for many hundred years. G. (meaning the said supposed gentleman) The common laws to which you (meaning the said supposed farmer) refer are equal, just, and humane; *but the King (meaning our said Lord the King) and Parliament (meaning the parliament of this realm)* may alter them (meaning the laws of this realm) when they (meaning our said Lord the King and the said parliament) please. F. (meaning the said supposed farmer) The King ought, therefore, to be a good man, and the Parliament to consist of men equally good. G. (meaning the said supposed gentleman) The King alone can do no harm; but who must judge the goodness of parliament-men? F. (meaning the said supposed farmer) All those whose property, freedom, and lives, may be affected by their (meaning the parliament-men) laws. G. (meaning the said supposed gentleman) Yet six men in seven who inhabit this Kingdom, (meaning the kingdom of Great Britain) have, like you, (meaning the said supposed farmer) no votes (meaning votes in the election of members of the House of Commons of this kingdom); and the petition which I (meaning the said supposed gentleman) desired you (meaning the said supposed farmer) to sign has nothing for its (meaning such petition's) object, but the restoration of you all (meaning the six men in seven who inhabit this kingdom having no votes as aforesaid) to the right of chusing those law-makers by whom your (meaning the said last mentioned

oned men's) money or your (meaning the said last mentioned men's lives may be taken from you, (meaning the said last-mentioned men). Attend while I (meaning the said supposed gentleman) read it (meaning the said petition) distinctly. F. (meaning the said supposed farmer) Give me (meaning the said supposed farmer) your (meaning the said supposed gentleman's) pen, I (meaning the said supposed farmer) never wrote my (meaning the said supposed farmer's) name ill, as it may be written with greater eagerness. G. (meaning the said supposed gentleman) I (meaning the said supposed gentleman) applaud you, (meaning the said supposed farmer) and trust that your (meaning the said supposed farmer's) example will be followed by millions. Another word before we (meaning the said supposed gentleman, and the said supposed farmer) part; recollect your (meaning the said supposed farmer's) opinion about your club in the village, (meaning the said club) and tell me (meaning the said supposed gentleman) what ought to be the consequence if the King (meaning our said Lord the King) alone were to insist on making laws, or on altering them at his (meaning our said Lord the King's) will and pleasure? F. (meaning the said supposed farmer) He (meaning the said Lord the King) too must be expelled. G. (meaning the said supposed gentleman) Oh! but think of his (meaning our said Lord the King's) standing army, and of the militia, which now are his (meaning our said Lord the King's) in substance, though ours (meaning the subjects of this realm) in form. F. (meaning the said supposed farmer) If he meaning our said Lord the King) were to employ that force against the nation (meaning the subjects of this realm) they (meaning the said nation) would and ought to resist him, (meaning our said Lord the King) or the state would cease to be a state. G. (meaning the said supposed gentleman) What if the great accountants, and great lawyers, the Lillys and Spelmans of the nation (meaning this kingdom) were to abuse their (meaning the said great accountants and great lawyers) trust, and cruelly injure instead of faithfully serving the public. F. (meaning the said supposed farmer) We (meaning the subjects of this realm) must request the King (meaning our said Lord the King) to remove them

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(meaning the said great accountants and great lawyers) and make trial of others: but none should implicitly be trusted. G. (meaning the said supposed gentleman) But what if great lords or wealthy men were to keep the King (meaning our said Lord the King) himself in subjection; yet exert his (meaning our said Lord the King's) force, lavish his (meaning our said Lord the King's) treasure, and misuse his (meaning our said Lord the King's) name, so as to domineer over the people, (meaning the subjects of this realm) and manage the Parliament (meaning the Parliament of this realm). F. (meaning the said supposed farmer) We (meaning the subjects of this realm) must fight for the King (meaning our said Lord the King) and ourselves (meaning the subjects of this realm). G. meaning the said supposed gentleman) You (meaning the said supposed farmer) talk of fighting, as if you (meaning the said supposed farmer) were speaking of some rustic engagement at a wake, but your (meaning the subjects of this realm) quarter staffs would avail you (meaning the said subjects) little against bayonets. F. (meaning the said supposed farmer) We (meaning the said subjects) might easily provide ourselves (meaning the said subjects) with better arms. G. (meaning the said supposed gentleman) Not so easily when the moment of resistance came; you (meaning the said subjects) would be deprived of all arms, and those who should furnish you (meaning the said subjects) with them (meaning arms) or exhort you (meaning the said subjects) to take them (meaning arms) up, would be called traitors, and probably put to death. F. (meaning the said supposed farmer) We (meaning the said subjects) ought always therefore to be ready, and keep each of us (meaning such subjects) a strong firelock in the corner of his (meaning such subjects) bed room. G. (meaning the said supposed gentleman) That would be legal as well as rational. Are you, (meaning the said supposed farmer) my honest friend, provided with a musket? F. (meaning the said supposed farmer) I (meaning the said supposed farmer) will contribute no more to the club (meaning the club above-mentioned) and purchase a firelock with my (meaning the said supposed farmer's) savings. G. (meaning the said supposed gentleman) It is not necessary,

necessary, I (meaning the said supposed gentleman) have two (meaning two firelocks) and will make you (meaning the said supposed farmer) a present of one, (meaning one firelock) with complete accoutrements. F. (meaning the said supposed farmer) I (meaning he said supposed farmer) accept it (meaning the said last mentioned firelock) thankfully, and will converse with you (meaning the said supposed gentleman) at your (meaning the said supposed gentleman's) leisure, on other subjects of this kind. G. (meaning the said supposed gentleman) In the mean while spend an hour every morning in the next fortnight, in learning to prime and load expeditiously, and to fire and charge with bayonet firmly and regularly; I (meaning the said supposed gentleman) say every morning, because if you (meaning the the said supposed farmer) exercise too late in the evening, you (meaning the said supposed farmer) may fall into some legal snares, which have been spread for you by those gentlemen, who would rather secure game for their table than liberty for the nation (meaning this realm.) F. (meaning the said supposed farmer) Some of my (meaning his the said supposed farmer's) neighbours, who have served in the militia, (meaning the militia of this realm) will readily teach me (meaning the said supposed farmer) and perhaps the whole village may be persuaded to procure arms and learn their exercise. G. (meaning the said supposed gentleman) It cannot be expected that the villagers should purchase arms, but they, (meaning such villagers) might easily be supplied, if the gentry of the nation (meaning this realm) would spare a little from their (meaning such gentry's) vices and luxury. F. (meaning the said supposed farmer) May they (meaning such gentry) turn to some sense of honour and virtue. G. (meaning the said supposed gentleman) Farewel at present, and remember that a free state is only a more numerous and more powerful club; and that he only is a freeman who is a member of such a state. F. (meaning the said supposed farmer) Good morning, Sir, you (meaning the said supposed gentleman) have made me (meaning the said supposed farmer) wiser and better than I (meaning himself, the said supposed farmer) was yesterday; and yet, methinks, I (meaning himself the said supposed farmer) have

have some knowledge in my (meaning the said supposed farmer's) own mind of this great subject, and have been a politician all my (meaning the said supposed farmer's) life without perceiving it. IN CONTEMPT of our said Lord the King, and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

AND the Jurors aforesaid, upon the oath aforesaid, do further present, that the said William Davies Shipley, being a person of such wicked and turbulent disposition, as aforesaid, and maliciously designing and intending to excite and diffuse among the subjects of this realm, discontents, jealousies and suspicions of our said Lord the King and his Government, and disaffection and disloyalty to the person and government of our said Lord the now King, and to raise very dangerous seditions and tumults within this kingdom, and to draw the government of this kingdom into great scandal, infamy and disgrace, and to incite the subjects of our said Lord the King, to attempt by force and violence, and with arms, to make alterations in the government, state and constitution of this kingdom, on the said first day of April, in the year aforesaid, at Wrexham aforesaid, in the said county of Denbigh, wickedly and seditiously published, and caused and procured to be published, a certain false, wicked, seditious, malicious and scandalous libel, of and concerning our said Lord the King and the Government of this realm, in the form of a supposed dialogue between a supposed gentleman and a supposed farmer, wherein the part of the supposed gentleman in the said dialogue is denoted by the letter G. and the part of the supposed farmer in such supposed dialogue, is denoted by the letter F. entitled, "The Principles of Government between a Gentleman and a Farmer," in which libel is contained, the false, wicked, malicious, seditious, and scandalous matters following: (to wit,) F. (meaning the said supposed farmer) Why should humble men like me sign or set marks to petitions of this nature? It is better for us farmers to mind our husbandry, and leave what we cannot comprehend to the King and Parliament. G. (meaning the said supposed gentleman) You can comprehend more than you imagine, and as a free member of
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a free state have higher things to mind than you may conceive. F. (meaning the said supposed farmer) If by free you mean out of prison, I hope to continue so as long as I can pay my rent to the 'squire's bailiff; but what is meant by a free state? G. (meaning the said said supposed gentleman) Tell me first what is meant by a club in the village, of which I know you to be a member. F. (meaning the said supposed farmer) It is an assembly of men who meet after work every Saturday, to be merry and happy for a few hours in the week. G. (meaning the said supposed gentleman) Have you no other object but mirth? F. (meaning the said supposed farmer) Yes, we have a box, into which we contribute equally from our monthly or weekly savings, and out of which any members of the club are to be relieved in sickness or poverty, for the parish officers are so cruel and insolent, that it were better to starve than to apply to them for relief. G. (meaning the said supposed gentleman) Did they or the 'squire, or the parson, or altogether, compel you to form this society? F. (meaning the said supposed farmer) Oh! no; we could not be compelled; we formed it by our own choice. G. (meaning the said supposed gentleman) You did right. But have you not some head or president of your club. F. (meaning the said supposed farmer) The master for each night is chosen by all the company present the week before. G. (meaning the said supposed gentleman) Does he make laws to bind you in case of ill temper or misbehaviour. F. (meaning the said supposed farmer) He make laws! he bind us! no; we have all agreed to a set of equal rules, which are signed by every new comer, and were written in a strange hand by young Spelman, the lawyer's clerk, whose uncle is a member. G. (meaning the said supposed gentleman) What should you do, if any one member were to insist on becoming perpetual master, and on altering your rules at his arbitrary will and pleasure? F. (meaning the said supposed farmer) We should expel him. G. (meaning the said supposed gentleman) What if he were to bring a serjeant's guard when the militia are quartered in your neighbourhood, and insist upon your obeying him. F. (meaning the said supposed farmer) We should resist if we could, if not the society would be broken up. G. (meaning the said supposed

posed gentleman) Suppose that with his serjeant's guard he were to take the money out of the box, or out of your pockets. F. (meaning the said supposed farmer) Would not that be a robbery? G. (meaning the said supposed gentleman) I am seeking information from you. How should you act on such an occasion. F. (meaning the said supposed farmer) We should submit perhaps at that time, but should afterwards try to apprehend the robbers. G. (meaning the said supposed gentleman) What if you could not apprehend them. F. (meaning the said supposed farmer) We might kill them, I should think, and if the King would not pardon us, God would. G. (meaning the said supposed gentleman) How could you either apprehend them, or if they resisted, kill them, without a sufficient force in your own hands. F. (meaning the said supposed farmer) Oh! we are all good players at single stick, and each of us has a stout cudgel or quarter-staff in the corner of his room. G. (meaning the said supposed gentleman) Suppose that a few of the club were to domineer over the rest, and insist upon laws for them. F. (meaning the said supposed farmer) We must take the same course; except that it would be easier to restrain one man than a number; but we should be the majority with justice on our side. G. (meaning the said supposed gentleman) A word or two on another head. Some of you, I presume, are not great accountants. F. (meaning the said supposed farmer) Few of us understand accounts; but we trust Old Lilly the schoolmaster, whom we believe to be an honest man, and he keeps the key of our box. G. (meaning the said supposed gentleman) If your money should in time amount to a large sum, it might not perhaps be safe to keep it at his house, or in any private house. F. (meaning the said supposed farmer) Where else should we keep it? G. (meaning the said supposed gentleman) You might chuse to put it into the funds, or lend it to the 'squire who has lost so much lately at New Market, taking his bond, or some of his fields, as your security for payment, with interest. F. (meaning the said supposed farmer) We must in that case confide in young Spelman, who will soon set up for himself; and, if a lawyer can be honest, will be an honest lawyer. G. (meaning the said supposed gentleman) What power do you

you give to Lilly, or should you give to Spelman, in the case supposed? F. (meaning the said supposed farmer) No power; we should give them both a due allowance for their trouble, and should expect a faithful account of all they had done for us. G. (meaning the said supposed gentleman) Honest men may change their nature. What if both, or either of them, were to deceive you? F. (meaning the said supposed farmer) We should remove them, and put our trust in better men, and try to repair our loss. G. (meaning the said supposed gentleman) Did it never occur to you, that every state or nation was only a great club? F. (meaning the said supposed farmer) Nothing ever occurred to me on the subject, for I never thought about it. G. (meaning the said supposed gentleman) Though you never thought before on the subject, yet you may be able to tell me, why you suppose men to have assembled, and to have formed nations, communities, or states, which all mean the same thing? F. (meaning the said supposed farmer) In order, I should imagine, to be as happy as they can while they live. G. (meaning the said supposed gentleman) By happy do you mean merry only? F. (meaning the said supposed farmer) To be as merry as they can without hurting themselves or their neighbours, but chiefly to secure themselves from danger, and to relieve their wants. G. (meaning the said supposed gentleman) Do you believe that any King or Emperor compelled them to associate? F. (meaning the said supposed farmer) How could one man compel a multitude. A king or an emperor, I presume, is not born with an hundred hands. G. (meaning the said supposed gentleman) When a prince of the blood shall in any country be so distinguished by nature, I shall then, and then only, conceive him to be a greater man than you. But might not an army, with a king or general at their head, have compelled them to assemble? F. (meaning the said supposed farmer) Yes; but the army must have been formed by their own choice; one man, or a few, can never govern many without their consent. G. (meaning the said supposed gentleman) Suppose, however, that a multitude of men, assembled in a town or city, were to chuse a king or governor, might not they give him high power and authority. F. (meaning the said supposed farmer)

mer) To be sure; but they would never be so mad, I hope as to give him a power to make their laws. G. (meaning the said supposed gentleman) Who else should make them? F. (meaning the said supposed farmer) The whole nation or people. G. (meaning the said supposed gentleman) What if they disagreed? F. (meaning the said supposed farmer) The opinion of the greater number, as in our village clubs, must be taken, and prevail. G. (meaning the said supposed gentleman) What could be done if the society were so large that all could not meet in the same place? F. (meaning the said supposed farmer) A greater number must chuse the less. G. (meaning the said supposed gentleman) Who should be the chusers? F. (meaning the said supposed farmer) All who are not upon the parish. In our club, if a man asks relief of the overseer he ceases to be one of us; because he must depend on the overseer. G. (meaning the said supposed gentleman) Could not a few men, one in seven, for instance, chuse the assembly of law-makers as well as a large number? F. (meaning the said supposed farmer) As conveniently perhaps, but I could not suffer any man to chuse another who was to make laws, by which my money or my life might be taken from me. G. (meaning the said supposed gentleman) Have you a freehold in any county of forty shillings a-year. F. (meaning the said supposed farmer) I have nothing in the world but my cattle, implements of husbandry, and household goods, together with my farm, for which I pay a fixed rent to the 'squire. G. (meaning the said supposed gentleman) Have you a vote in any city or borough? F. (meaning the said supposed farmer) I have no vote at all, but am able by my honest labour to support my wife and four children; and whilst I act honestly, I may defy the laws. G. (meaning the said supposed gentleman) Can you be ignorant, that the parliament to which members are sent by this county, and by the next market town, have power to make new laws, by which you and your family may be stripped of your goods, thrown into prison, and even deprived of life? F. (meaning the said supposed farmer) A dreadful power! I never made enquiries, having business of my own, concerning the business of parliament, but imagined that the laws had been
fixed

fixed for many hundred years. G. (meaning the said supposed gentleman) The common laws to which you refer are equal, just, and humane, but the King and Parliament may alter them when they please. F. (meaning the said supposed farmer) The King ought therefore to be a good man, and the Parliament to consist of men equally good. G. (meaning the said supposed gentleman) The King alone can do no harm, but who must judge the goodness of Parliament-men? F. (meaning the said supposed farmer) All those whose property, freedom, and lives, may be affected by their laws. G. (meaning the said supposed gentleman) Yet six men in seven, who inhabit this kingdom have, like you, no votes; and the petition which I desired you to sign, has nothing for its object but the restoration of you all to the right of chusing those law-makers, by whom your money or your lives may be taken from you. Attend while I read it distinctly. F. (meaning the said supposed farmer) Give me your pen. I never wrote my name, ill as it may be written, with greater eagerness. G. (meaning the said supposed gentleman) I applaud you, and trust that your example will be followed by millions. Another word before we part; recollect your opinion about your club in the village, and tell me what ought to be the consequence, if the King alone were to insist on making laws, or on altering them at his will and pleasure. F. (meaning the said supposed farmer) He too must be expelled. G. (meaning the said supposed gentleman) Oh! but think of his standing army, and of the militia, which now are his in substance, though ours in form. F. (meaning the said supposed farmer) If he were to employ that force against the nation, they would and ought to resist him, or the state would cease to be a state. G. (meaning the said supposed gentleman) What if the great accountants and great lawyers, the Lillys and Spelmans of the nation, were to abuse their trust, and cruelly injure instead of faithfully serving the public? F. (meaning the said supposed farmer) We must request the King to remove them and make trial of others; but none should implicitly be trusted. G. (meaning the said supposed gentleman) But what if a few great lords or wealthy men were to keep the King himself in subjection, yet exert his force, lavish his treasure,

sure, and misuse his name, so as to domineer over the people and manage the parliament? F. (meaning the said supposed farmer) We must fight for the King and ourselves. G. (meaning the said supposed gentleman) You talk of fighting as if you were speaking of some rustic engagement at a wake; but your quarter-staffs would avail you little against bayonets. F. (meaning the said supposed farmer) We might easily provide ourselves with better arms. G. (meaning the said supposed gentleman) Not so easily, when the moment of resistance came you would be deprived of all arms, and those who should furnish you with them, or exhort you to take them up, would be called traitors, and probably put to death. F. (meaning the said supposed farmer) We ought always therefore to be ready, and keep each of us a strong firelock in the corner of his bed-room. G. (meaning the said supposed gentleman) That would be legal as well as rational. Are you, my honest friend, provided with a musket? F. (meaning the said supposed farmer) I will contribute no more to the club, and purchase a firelock with my savings. G. (meaning the said supposed gentleman) It is not necessary, I have two, and will make you a present of one, with complete accoutrements. F. (meaning the said supposed farmer) I accept it thankfully, and will converse with you at your leisure on other subjects of the kind. G. (meaning the said supposed gentleman) In the mean while spend an hour every morning in the next fortnight, in learning to prime and load expeditiously, and to fire and charge with bayonet, firmly and regularly. I say every morning, because, if you exercise too late in the evening, you may fall into some of the legal snares which have been spread for you, by those gentlemen, who would rather secure game for their table than liberty for the nation. F. (meaning the said supposed farmer) Some of my neighbours who have served in the militia will readily teach me, and perhaps the whole village may be persuaded to procure arms, and learn their exercise. G. (meaning the said supposed gentleman) It cannot be expected that the villagers should purchase arms, but they might easily be supplied, if the gentry of the nation would spare a little from their vices and luxury. F. (meaning the said supposed farmer) May they

they turn to some sense of honour and virtue! G. (meaning the said supposed gentleman) Farewel, at present, and remember that a free state is only a more numerous and more powerful club, and that he only is a free man who is member of such a state. F. (meaning the said supposed farmer) Good morning, Sir, you have made me wiser and better than I was yesterday; and yet methinks I had some knowledge in my own mind of this great subject, and have been a politician all my life without perceiving it. IN CONTEMPT of our said Lord the King and his laws, to the evil example of all others, in the like case offending, and against the peace of our said Lord the King, his Crown and Dignity.

AND the said William Davies Shipley, in his own proper person, comes, and having heard the said Indictment read, says, that he is not guilty in manner and form, as by the said Indictment above is alledged, and of this he puts himself upon the country. AND Henry Hall, Esquire, Attorney General of our said Lord the King that now is, who for the same Lord the King, in this behalf, prosecuteth likewise. THEREFORE, &c.

In September 1783, the trial was put off on the application of the prosecutor.—In April 1784, the prosecutor, on the morning upon which the trial was to have come on, (the special jury having been struck the day before) produced a certiorari to remove the Indictment into the Court of King's Bench, when the Court directed it to be tried at the next assizes at Shrewsbury: And on Friday the 6th of August, 1784, the following proceedings were had at the assizes at Shrewsbury, before the Honourable Mr. Justice Buller.

The Names of the JURORS.

John Nicholls, of Chelmarsh, Esq;
 William Pemberton, of Walford, Esq;
 Charles Walcott, of Bitterley, Esq;
 Francis Lloyd, of Berghill, Esq;
 Thomas Ottley, of Pitchford, Esq;
 Joshua Blakeway, of Lythwood, Esq;
 Richard Jones, of Riston, Esq;
 John Hill of Prees, Esq;
 Edward Williams, of Norton, Esq;
 Thomas Kinnerley, of Leighton, Esq;
 Thomas Eyton, of Wellington, Esq;
 John Smitheman, of Buildwas, Esq;

COUNSEL for the CROWN.

Mr. Bearcroft.
 Mr. Cowper.
 Mr. Leycester.
 Mr. Bower.
 Mr. Manley.
 Mr. Richards.
 Solicitor.
 Mr. William Jones, of Ruthin.

COUNSEL for the DEFENDANT.

The Hon. Thomas Erskine.
 Mr. Corbett.
 The Hon. Thomas Brodrick.
 Mr. Abbot.
 Solicitor.
 Mr. Lewis Hughes, of St. Asaph.

Mr.

MR. RICHARDS.

MAY it please your Lordship, and you Gentlemen of the Jury. This was an Indictment that was preferred at the great sessions held at Wrexham for the County of Denbigh, against William Davies Shipley, Clerk, which charges, That he being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse amongst the subjects of this realm, discontents, jealousies, and suspicions of our Lord the King and his Government, and disaffection and disloyalty to the person and government of our Lord the now King, and to raise very dangerous seditions and tumults within this kingdom, and to draw the government of this kingdom into great scandal, infamy, and disgrace, and to excite the subjects of our Lord the King, to attempt, by force and violence, and with arms, to make alterations in the government, state and constitution of this kingdom, on the first day of April, in the twenty-third year of the reign of his present Majesty, at Wrexham, in the County of Denbigh, aforesaid, wickedly and seditiously, published, and caused and procured to be published, a certain false, wicked, malicious, seditious and scandalous libel, of and concerning our said Lord the King, and the government of this realm.

The Indictment states the libel, which will presently be read to you. To this the defendant has pleaded not guilty. When the libel is read to you, and the evidence is given, it will be your province to determine whether the Charge is true or not.

MR. BEARCROFT.

MAY it please your Lordship, and you Gentlemen of the Jury: It has fallen to my lot to attend as Counsel for this prosecution, which brings before you a cause of considerable warmth and expectation.

Gentlemen, I shall introduce nothing of the former into this cause. I heartily hope you are free from any thing of the kind: and I believe it. All that I shall desire of you, will be to attend to, and understand the nature of
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this charge, and of the question that you are to decide upon; to determine them like men of honour, good subjects, men of sense; and according to the oath you have taken.

Gentlemen, how this prosecution was instituted, and by whom, as it is a matter that I am utterly unacquainted with, except by report; so it is a matter that has nothing to do with the present business. I am to state to you, and explain as well as I shall be able, the nature of the charge. I am to call the witnesses to prove it: You are to hear the other side, which is essential to all inquiries of justice, and then you will consider, whether the defendant is, or is not, guilty of the offence whereof he stands accused.

Gentlemen, this charge is against Dr. Shipley, Dean of St. Asaph, a gentleman in possession of very large church preferments, that he has published a libel, of and concerning the King and his Government: and when I state it thus shortly, I think I have stated it correctly, as a lawyer. It behoves me, however, to enter somewhat more deeply into it, and to shew why it is to be considered as a libel, and why the offence is fit to be punished.

Gentlemen, a libel is a crime against the public, as I have ever understood it, upon this simple principle, that it tends to a breach of the public peace; and whatever is charged as an indictable libel, if it can be stripped of that quality, and it shall appear, that it does not in any degree tend to a breach of the public peace, there certainly is no longer any criminal matter in it.

Upon the other hand I contend, if it does, in the smallest degree, tend to a breach of the public peace, then it is a libel, punishable by way of indictment.

Gentlemen, the present libel is a publication of considerable length; it is addressed to the multitude, by which term I am sure I shall not have justice done me, if I am supposed to use a term of contempt: I mean no such thing; I am as clear of opinion as the Reverend Dean who has published this performance, that the multitude in a free country are justly respectable.

The meaning of my observation, that it is addressed to the multitude is, that it is therefore more likely to produce
that

that which I consider as the essence and foundation of criminality in a libel; that is to say, a breach of the public peace.

Gentlemen, the manner of this publication is conceived in a dialogue between a gentleman and a farmer, and I think I may fairly remark, that even by the very first lines, which are used in it, and put in the mouth of the farmer, and very naturally in that character, it should seem that there was no necessity in these times for this application to men of that description.

Gentlemen, the dialogue seems to me to be supposed to begin upon the occasion of an application very frequent upon all sides; for, if there were no sides and no parties, nothing of this sort would ever appear, I am satisfied. Applying to such a character as an honest farmer to sign a certain petition; a petition that undoubtedly, by its context, must be supposed to state certain, and, I apprehend, you will readily conceive what particular grievance.

Upon that application, the first words you will find in the book are in the mouth of the farmer: Why should humble men like me, sign, or set marks to, petitions of this nature? It is better for us farmers to mind our husbandry, and leave what we cannot comprehend to the King and Parliament—That is sound sense and good doctrine which is put in the mouth of the farmer. It would have been very well for the public, if the Reverend Defendant would have been contented to preach upon the text, “Fear God, and honour the King,” without disturbing the minds of quiet men by a publication of this sort, in which there is not a syllable of piety; and in which I observe a doctrine so directly opposite to that of honouring the King, that it is plainly written against the King and his Government.

Gentlemen, the farmer is stating his sense and feelings in a very decent way; and, as it seems to me, the farmer was not disposed to sign this petition, or to assent to the several questions calculated to entrap his understanding; to persuade him that he is, what he did not at all feel or suspect himself to be, cheated out of his birthright; and that he has no chance of recovering it, but by learning the Prussian exercise; for he is advised, and all his
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brother farmers are advised, every morning to practise, till they become perfect in their manual exercise, to prime and load quick, (all this you will find when the paper comes to be read) and to make themselves a match for the King's standing army, and the militia of this country—in substance (as it is alledged by this libel) the King's standing army, though in form ours. That doctrine you will find, I believe, in those very words, flatly averred in the course of this publication. For what is all this to be done? I am not reading the dialogue to you, it would be impossible for you to understand and feel it in that way, but I am stating it as I really feel and understand it; and, I trust, I have not mistaken the argument and the end proposed by publishing and dispersing it, and delivering gratis this dialogue to the people of the neighbouring principality.

Gentlemen, the grievance suggested to this farmer, who felt none, is this, that truly a false, unjust, and an unconstitutional mode of representation takes place in this country. The position is this, that every man of one and twenty, in this country, has a right to vote in some shape or other to send representatives to parliament; and this the learned and reverend Divine contends to be the constitution of England.

Gentlemen, we consist of many millions of people, and it would be a dreadful thing if it was the constitution of this country; and it would not be much improved, if every man of that description was taught to load and prime quick, and to make use of the bayonet. Picture to yourselves all the people of this country who arrive at the age of twenty-one, attending at elections with their muskets upon their shoulders, and a bayonet at their sides; picture to yourselves the spirit to quarrel that perpetually attends every such assembly of people, and tell me, whether any man with a good heart or a sound head can wish such an event to happen in this country; at this moment, does not every man lament, from the bottom of his heart, the situation of a country very materially connected with us? alas! too like that which is by this libel recommended to this kingdom.

The question then is put, How you are to restore your rights? The answer is, By being armed; and then an argument

gument is suggested, That it is the right of the subjects of this country to be armed. In one sense there is not a doubt of it; it is the right of the people of this country, and that right alone is sufficient to defend themselves against a real attack upon their liberties.

By the law of this country, every man is intitled to be in possession of arms, and any attempt, I agree most perfectly with the best friends of the Reverend Defendant in point of law, to disarm the people of this country, to take from them their arms, and to take from them the power of defending themselves upon any proper occasion, is illegal and unconstitutional, and I would go as far as any man against such an attempt.

Gentlemen, Is it not enough for freemen, that they may have their arms in their houses, that, according to their estate and degree, and the fashion of the times, they may wear them as they please? but, can he be a good subject, and wish well to the commonwealth, who advises almost every man in this country to become a soldier?

I do not argue how mischievous it may be to arts, manufactures, and agriculture, because that it is not the question before you; but, I say any man that advises the subjects of this country to bear arms (for such is the effect of this dialogue), and that with a view to reinstate themselves in this fancied right of every man's voting for representatives in parliament, is guilty of a gross and heinous libel, for it not only tends directly to a breach of the peace, in some degree, which is enough to form a libel; but it is impossible not to see it tends to tumult and sedition, and the most dreadful consequences; consider the form and the intent, it seems to me there is hardly more than one view that pervades this dialogue from the beginning to the end, by comparing this country to a self-instituted club. I will not wage war with great names and speculative politicians in their closets. It is asserted, upon one of the leaves of this libel, that the doctrine promulgated by this dialogue, is such as you may read in Locke, and other great authorities upon government; I think not. If I am right in contending that the doctrine and the advice here is, that every male of twenty-one has a right to chuse his representative; that the people of this country are robbed of this

right; and that, in consequence of this right being taken from them, they are robbed of their money, and so forth, which you see is manifestly suggested in every page of this libel; then, I say, the advice to bear arms as the only method to right themselves, is not only a libel, but it approaches closely to the crime of high treason itself; for, I am bold to state as a lawyer, that if any man advises any set of men to bear arms to make any alteration in the state and government that obtains in this country, and should so far succeed as to persuade those men to take any step in fact towards it, even to march with their arms and banners, declaring that such is their object, both he and they, as in point of law it has been solemnly determined, are guilty of the crime of high treason. If, therefore, the tendency of this dialogue be, in any degree, to persuade men to put themselves in the condition which leads to that, it not only is a libel, but a libel of the greatest magnitude, for it approaches the offence that I have mentioned.

Gentlemen, I know not how this case is to be treated upon the part of the defence; it is, as I said before, a cause of warmth and of expectation; I know my learned friend's abilities, I know his warmth, and every thing that can, by any possibility, be said to get your favour for his client, or that will have the appearance of argument, you will hear urged, I do not doubt, with the utmost ability.

With regard to myself, I have only this to say, I know nothing of this prosecution, I know nothing of the prosecutor, but in the shape of a client putting a brief into my hands to prosecute a person charged with a public offence, and it is my duty to do it.

I will go the length to say, and I do not believe I do the prosecutor any harm when I say it, he has a right to follow his own judgment. If I were asked the question, Whether I would advise such a prosecution? I should have had no difficulty at once to say, It is not prudent; but if I were asked the question as a lawyer, Is this a crime? Is this a libel? I charge you, sir, to tell me, as a professor of the law of the land, what is your opinion? I declare, upon my honour, I should have felt myself forced to declare, and should have declared, as far as my poor simple authority goes,

I not only think it a libel, but I think it a most enormous and mischievous libel.

Gentlemen, I should have thus reasoned; I should have said either this publication has no meaning at all, and that nobody will think, from the learned publisher of it; or it has a very wicked and a bad meaning; it has that meaning which makes it a libel; that is to say, it means to reflect upon the King's government, to excite sedition and discontent amongst the people; and it is impossible for any body to read it, but they must see, that the subject-matter really aimed at, and in many parts spoken of in plain terms, are the King and his Government.

Gentlemen, upon these occasions it is not unfrequent, and my learned friend will do every thing, I dare say, upon the other side, and enter into questions about the province of the Jury upon the present occasion. You will be directed by a better authority a great deal than mine, I will venture to suggest, but under the correction of that authority, which I shall obey implicitly. The law of libels, with respect to the Jury, is this: If the words want explanation, and a meaning is given to them by an averment in the record, saying that those words, naming them that you find in the libel, have this meaning; it is incontestibly the province of the Jury, it is a province that nobody ought to invade, to decide, whether they have that meaning aye or no; and I believe it never yet was attempted, by any judge, to rob them of that jurisdiction.

Gentlemen, another thing is necessary; the jury are to decide, whether the whole publication is concerning the matter and subject that it is averred to concern and relate to? Now, in this prosecution, the libel is stated at length, it wants no explanation, except the explanation of the single letters, whether G. means gentleman, F. farmer; whether the word King, means King of Great Britain, and Parliament the Parliament of Great Britain; all through the libel it is in averments. It is averred, this libel is published of and concerning our said Lord the King, and the Government of this realm.

Now, I am free to admit this, I really believe, in my poor judgment, it is the business of the jury to decide, whether this libel means to point out, or make the subject-matter
of

of its discussion, our said Lord the King, and the Government of this realm. Gentlemen, that is what you are to decide upon.

I will just say a word about that expression. The legal term always used is, that it is of and concerning the King and his Government (for the government of this country, in the executive part of it, most undoubtedly is in the King); and I conceive the language of the law always is, that if there be any libel published touching the government of this kingdom as it is carried on by parliament, I say, that in point of law, that is a discourse touching the King and his Government, because he is considered as part of the government, and at the head of it. Therefore, when the phrase is made use of here, touching the King and his Government of this realm, if you should be satisfied upon reading this libel, it is concerning the government, it follows of course, it is concerning the King and his government, for the government is by the King and Parliament, and proper officers under the King.

Gentlemen, I humbly conceive, this therefore is all you have to do upon the present occasion. I know not your connections, or wishes, or party; but I am confident, that fitting where you do, in the character of Jurymen, you will lay aside all general opinions, and all inclinations whatever: you will not consider who is the prosecutor; you will not consider who is the defendant; you will not consider where this prosecution first originated, you will not consider how it comes (though, I dare say, we shall hear a great deal about it) not to have been tried before; but you will consider, that you are sworn to try whether the Defendant is, or is not, guilty of this charge, upon the evidence that will be laid before you.

Gentlemen, I beg your pardon, by accident I have taken up more of your time than I intended; I shall now leave the cause with you, in confidence you will treat it as men of sense; and, having a regard for your oaths, you will try the true question between the parties; and, I doubt not, when this libel comes to be read at length, it will be impossible for you to do otherwise than say, It is for the purpose of creating suspicions and bad opinions of the King's government; and of course it is written upon that subject.

If

If that be so, it follows, in point of law, (as I conceive) you are bound to find him guilty. In so doing, you subject him to that to which the subjects of this kingdom are all liable in cases of misdemeanors, to the discretionary judgment of the superior Court of Criminal Law of this country; that discretion they will exercise according to the circumstances of the case. When the party is convicted he has a right to apply to that court, and say, This is not a libel that is stated upon this indictment; in point of law he has the benefit of that, if there is no ground for it; he has a right to apply upon any circumstances that go to the mitigation of the offence, and they will certainly be considered in the discretionary judgment of that court.

Gentlemen, I shall call the witnesses; you will give your particular attention to the publication; in all probability, before you decide this question, you will look at, and read it by yourselves. If, upon so reading, you should be of opinion it is touching and concerning the King's government, it is, as I call it, a heinous libel, because it tends to a gross disturbance of the peace of this country.

I know not whether I shall have an opportunity of again addressing you; that depends upon the course that will be taken in the defence by the counsel, or witnesses, if they should be called.

I shall not wantonly insist upon that right which I am of opinion at this day exists, if the prosecutor chuses to make use of it. If I hear any arguments that are perfectly new, and are not to be considered as an answer to this charge, but wandering from the plain question, then I shall think myself called upon. At present I shall sit down, hoping, at least, I have got thus far, that you understand the principles of the law relative to libels. If I am right in thus laying it down, when you come to see and read it, I have no doubt you will think it is a very heinous libel indeed; and that you will be satisfied, that it was published by the defendant of the King and his Government.

Mr. Erskine. There is not any one innuendo in your Indictment.

Mr. Bower. There is the King, meaning our Lord the King, and Parliament, meaning the Parliament of Great Britain, the letter G. meaning gentleman, and F. meaning farmer.

Mr.

Mr. Justice Buller. That is all.

Mr. Bower. Yes.

Mr. Erskine. Those are the obvious innuendos—
wherever there is an innuendo in it, it is unnecessary.

Mr. Bower then stated the innuendos as they stood in the indictment again.

[The indictment itself was not read to the Jury, but the witnesses upon the part of the Crown were called and examined.]

The Reverend Mr. EDWARDS sworn. Examined
by Mr. COWPER.

Q. You are a clernyman, Sir, and acquainted with Mr. Shipley?

A. I am, Sir.

Q. Will you look, Sir, at the indorsement of that pamphlet? Whose hand writing are those words, Gentleman and Farmer?

A. The Dean's Sir.

Q. Have you seen that pamphlet? (Be pleased to keep it in your hands a moment.)

A. This pamphlet?

Q. Yes.

A. Yes, I have, Sir.

Q. I mean that identical pamphlet?

A. Yes, I have, Sir.

Q. From whom did you receive it?

A. From the Dean of St. Asaph.

Q. What request did he make you?

Mr. Erskine. If it was in writing, you will not speak to it, but produce the writing.

Then Mr. Edwards produced the letter.

Q. There is no date of the year; when did you receive it?

A. In 1783. Those were the directions.

Mr. Bearcroft. Q. Were those the directions you received, together with the pamphlet at the time?

A. They are, Sir.

Mr. Cowper. Q. Had you any other directions besides those?

A. None, Sir.

Q.

Q. I presume it was not personally you was directed, but it came inclosed in that letter, or accompanied by the letter?

A. Enclosed in that letter.

Q. Was the letter the Dean's hand writing.

A. It is, Sir.

Mr. Justice Buller. Q. What is the date of it?

Associate. There is January 24th upon the back.

The letter was then desired to be read by the associate, which was as follows :

TO THE REVEREND EDWARD EDWARDS.

" DEAR EDWARDS,

" I WILL trouble you to get an edition of the enclosed
" dialogue printed by Marsh, as soon as possible, with the fol-
" lowing advertisement annexed to it. He may put a price of
" two pence or three-pence, to bear expences. I shall advertise
" it in the Chester paper on Tuesday, so I hope it will be printed
" by that day. Yours,

WILLIAM DAVIES SHIPLEY."

ADVERTISEMENT.

" A short defence hath been thought necessary against a vio-
" lent and groundless attack upon the Flintshire Committee, for
" having testified their approbation of the following dialogue,
" which hath been publickly branded, with the most injurious
" epithets; and it is conceived, that the sure way to vindicate
" this little tract from so unjust a character, will be as pub-
" lickly to produce it. The friends of the revolution will in-
" stantly see, that it contains no principle which has not the
" support of the highest authority, as well as the clearest rea-
" son.

" If the doctrines, which it slightly touches in a manner
" suited to the nature of the dialogue, be ' seditious, treason-
" able, and diabolical,' Lord Somers was an incendiary, Locke
" a traitor, and the convention-parliament a pandæmonium; but
" if those names are the glory and boast of England, and if that
" convention secured our liberty and happiness, then the doctrines
" in question are, not only just and rational, but constitutional

*"and salutary; and the reproachful epithets belong wholly to
"the system of those, who so grossly misapplied them."*

Associate. The other is a private note.

Dean of St. Asaph. You may read it yourself.

JOHN MARSH called.

Mr. Cowper. Read the libel; the pamphlet that was handed up to Mr. Edwards.

Mr. Erskine. Is that proved?

Mr. Cowper. Yes.

Mr. Erskine. There is not an iota, or a letter, or a comma different, I suppose.

Mr. Cowper. I believe we must read this first.

Mr. Bower. We will produce Marsh if you wish to ask him any thing. I understand you wish to have Marsh produced.

Mr. Erskine. We have certainly a right to read that, as the paper signed by the Dean of St. Asaph.

Mr. Cowper. Then call John Marsh.

Mr. Erskine. As it is a thing that is printed, you had better call the printer.

Mr. Bearcroft. That which you promise to read is the second publication, I understand.

Mr. Cowper. Q. to Mr. Edwards. Did you deliver that pamphlet, according to the request contained in the Dean of Asaph's letter, to Mr. Marsh?

Mr. Edwards. I did.

Mr. Marsh called, who desired his expences to be paid.

Mr. Jones. I have paid him and his father three guineas towards it.

Mr. Justice Buller. Will you undertake to pay him?

Mr. Jones. I certainly will, my Lord.

Mr. Marsh. A guinea and an half is not sufficient for my necessary expences.

Mr. Justice Buller. He undertakes to pay you.

Mr. JOHN MARSH was then sworn. Examined
by Mr. LEYCESTER.

Q. Look at that pamphlet, tell us whether you ever saw it before?

A. Yes,

A. Yes, I have seen it before.

Q. Who delivered it to you?

A. It was delivered to me by my father; I was out at the time it was delivered.

Q. What is your father's name?

A. Richard.

Q. Do you know where this (the original) was printed?

A. No, I cannot tell that.

(Q. Shew the other to him;) look at that, and tell where it was printed?

A. It was printed at our office.

Mr. Justice Buller. Was it printed from that sent by Mr. Edwards?

A. Yes, I believe it was.

Mr. Jones, corrected by the Dean.

Mr. Bearcroft, corrected by the Dean.

Q. Did you ever see the Dean of St. Asaph afterwards, upon the subject of this pamphlet?

A. No.

Q. Did he ever call upon you; and what passed while it was going on?

A. In which part?

Q. While it was going on, while the pamphlet was in the printing-office?

A. It was struck off some weeks before ever I saw the Dean.

Q. Did you see him afterwards?

A. Yes.

Q. Will you tell us what passed?

A. I saw the Dean at Mr. Edwards's, at the vicarage, and related to him what happened of Mr. Jones coming to buy some pamphlets, and putting down mine and my father's name; the Dean seemed quite surprised that any thing of that kind should pass.

(Mr. Justice Buller. What?

Marsh. He seemed quite surprised).

Q. Did the Dean ever say any thing to you about the printing of it?

A. No, he had no reason.

Q. I don't ask what reason.

A. He said nothing; but only seemed quite surprised there should be any disturbance made about it.

Q. That any disturbance should be made about it?

A. No disturbance about it, but upon Mr. Jones coming into the shop.

Q. Did he ever say any thing to you about printing and dispersing, or selling them?

A. Mr. Edwards spoke to me about it.

Q. Was the Dean there?

A. No.

Mr. Erskine. You are in possession of that, from the letter of the Dean.—I do not mean to deny a syllable of that.

Dean of St. Asaph. I was at St. Asaph—I never saw him till the Prosecutor had been with him.

Mr. WILLIAM JONES sworn. Examined by
Mr. LEYCESTER.

Q. Where did you get that pamphlet in your hand?

A. I bought it from Mr. Marsh, on the 8th of February, 1783.

Q. He is a bookseller at Wrexham?

A. He is.

Mr. WILLIAM JONES cross examined by
Mr. ERSKINE.

Q. You are the prosecutor?

Mr. Cowper. We will hear the pamphlet read first.

Mr. Justice Buller. You may examine him first.

Q. You are the Prosecutor of this indictment.

A. I am.

Q. Did you, or any body for you, make any application to the Treasury for the prosecution of this?

A. I did.

Q. You did?

A. I did.

Q. What answer did you receive from the Treasury?

A. There was a written answer given.

Q. Have you got it?

A. The substance of it was—

Mr.

Mr. Bearcroft. Should we hear that answer, Mr. Erskine?

Mr. Erskine. In short, the Treasury would not prosecute—So you are now the Prosecutor, and not the Treasury.

A. I am the prosecutor, and not the Treasury.

Q. In consequence of their refusal?

A. It was not an absolute refusal.

Q. You do prosecute?

A. I do.

Mr. Bearcroft. What was it?

A. There was an application made by Mr. Fitzmaurice, as High Sheriff of the county: he had proceeded so far in the business himself, at least I proceeded by his direction, until he presented a memorial to the Treasury; and, upon receiving the answer from the Treasury, Mr. Fitzmaurice declined the prosecution himself, and I have gone on with it ever since.

Q. What was that answer?

A. The answer was, that they declined it.

Mr. Justice Buller. It is no evidence.

Mr. Bearcroft. They have not made it so.

Mr. Justice Buller. No, they were stopped.

Mr. Bearcroft. All I mean by it, is not to decline it, though I do not think it means any thing to the purpose.

Mr. Erskine. I do not think it does at present.

The pamphlet read.

The Principles of Government, in a Dialogue between a Gentleman and a Farmer.

F. Why should humble men like me, sign or set marks to petitions of this nature? It is better for us farmers to mind our husbandry, and leave what we cannot comprehend to the King and Parliament.

G. You can comprehend more than you imagine; and as a free member of a free state, have higher things to mind than you may conceive.

F. If

F. If by free you mean out of prison, I hope to continue so, as long as I can pay my rent to the 'squire's bailiff; but what is meant by a free state?

G. Tell me first what is meant by a club in the village, of which I know you to be a member?

F. It is an assembly of men, who meet after work every Saturday to be merry and happy for a few hours in the week.

G. Have you no other object but mirth?

F. Yes; we have a box, into which we contribute equally from our monthly or weekly savings, and out of which any members of the club are to be relieved in sickness or poverty; for the parish officers are so cruel and insolent, that it were better to starve than apply to them for relief.

G. Did they, or the 'squire, or the parson, or all together, compel you to form this society?

F. Oh! no; we could not be compelled; we formed it by our choice.

G. You did right.—But have you not some head or president of your club?

F. The master for each night is chosen by all the company present the week before.

G. Does he make laws to bind you in case of ill temper or misbehaviour?

F. He make laws! He bind us! No; we have all agreed to a set of equal rules which are signed by every new comer, and were written in a strange hand by young Spelman, the lawyer's clerk, whose uncle is a member.

G. What should you do, if any member were to insist on becoming perpetual master, and on altering your rules at his arbitrary will and pleasure.

F. We should expel him.

G. What, if he were to bring a serjeant's guard, when the militia are quartered in your neighbourhood, and insist upon your obeying him?

F. We would resist if we could; if not, the society would be broken up.

G. Suppose that, with his serjeant's guard, he were to take the money out of the box, or out of your pockets?

F. Would

F. Would not that be a robbery?

G. I am seeking information from you. How should you act upon such an occasion?

F. We should submit, perhaps, at that time; but should afterwards try to apprehend the robbers.

G. What if you could not apprehend them?

F. We might kill them, I should think; and if the King would not pardon us, God would.

G. How could you either apprehend them, or, if they resist, kill them, without a sufficient force in your own hands?

F. Oh! We are all good players at single-stick, and each of us has a stout cudgel or quarter-staff in the corner of his room.

G. Suppose that a few of the club were to domineer over the rest, and insist upon making laws for them?

F. We must take the same course; except it would be easier to restrain one man, than a number; but we should be the majority with justice on our side.

G. A word or two on another head. Some of you, I presume, are no great accountants?

F. Few of us understand accounts; but we trust old Lilly, the school-master, whom we believe to be an honest man; and he keeps the key of our box.

G. If your money should, in time, amount to a large sum, it might not, perhaps, be safe to keep it at his house, or in any private house.

F. Where else should we keep it?

G. You might chuse to put it into the funds, or to lend it the squire, who has lost so much lately at Newmarker, taking his bond or some of his fields, as your security for payment, with interest.

F. We must, in that case, confide in young Spelman, who will soon set up for himself, and if a lawyer can be honest, will be an honest lawyer.

G. What power do you give to Lilly, or should you give to Spelman, in the case supposed?

F. No power; we should give them both a due allowance for their trouble, and should expect a faithful account of all they had done for us.

G. Honest

G. Honest men may change their nature. What if both, or either of them, were to deceive you?

F. We should remove them, put our trust in better men, and try to repair our loss.

G. Did it never occur to you, that every state or nation was only a great club.

F. Nothing ever occurred to me on the subject; for I never thought about it.

G. Though you never thought before on the subject, yet you may be able to tell me, why you suppose men to have assembled, and to have formed nations, communities, or states, which all mean the same thing?

F. In order, I shall imagine, to be as happy as they can, while they live.

G. By happy, do you mean merry only?

F. To be as merry as they can without hurting themselves or their neighbours, but chiefly to secure themselves from danger, and to relieve their wants.

G. Do you believe, that any King or Emperor compelled them so to associate?

F. How could one man compel a multitude? a King or an Emperor, I presume, is not born with a hundred hands.

G. When a prince of the blood shall, in any country, be so distinguished by nature, I shall then, and then only, conceive him to be a greater man than you; but might not any army, with a King or General at their head, have compelled them to assemble?

F. Yes; but the army must have been formed by their own choice, one man of a few can never govern many without their consent.

G. Suppose, however, that a multitude of men, assembled in a town or city, were to chuse a King or Governor, might they not give him high power and authority?

F. To be sure; but they would never be so mad, I hope, as to give him a power of making their laws.

G. Who else should make them?

F. The whole nation or people.

G. What if they disagreed?

F. The

F. The opinion of the greater number as in our village-clubs, must be taken, and prevail.

G. What could be done, if the society were so large that all could not meet in the same place?

F. A greater number must chuse a less.

G. Who should be the chusers?

F. All who are not upon the parish in our club. If a man asks relief of the overseer, he ceases to be one of us, because he must depend upon the overseer.

G. Could not a few men, one in seven, for instance, chuse the assembly of law-makers as well as a larger number?

F. As conveniently, perhaps; but I would not suffer any man to chuse another who was to make laws, by which my money or my life might be taken from me.

G. Have you a freehold in any county of forty-shillings a year?

F. I have nothing in the world but my cattle, implements of husbandry, and household goods, together with my farm; for which I pay a fixed rent to the 'squire.

G. Have you a vote in any city or borough?

F. I have no vote at all: but am able, by my honest labour, to support my wife and four children, and, whilst I act honestly, I may defy the laws.

G. Can you be ignorant, that the parliament to which members are sent by this country, and by the next market town, have power to make new laws, by which you and your family may be stripped of your goods, thrown into prison, and even deprived of life?

F. A dreadful power! I never made enquiries; having business of my own, concerning the business of Parliament; but imagined the laws had been fixed for many hundred years.

G. The common laws to which you refer, are equal, just, and humane; but the King and Parliament may alter them when they please.

F. The King ought therefore to be a good man, and the Parliament to consist of men equally good.

G. The King alone can do no harm, but who must judge the goodness of Parliament men?

F. All those whose property, freedom and lives may be affected by their laws.

F

G. Yet

G. Yet six men in seven who inhabit this kingdom, have, like you, no votes; and the petition which I desired you to sign, hath nothing for its object but the restoration of you all, to the right of chusing those law-makers by whom your money or your lives may be taken from you: attend while I read it distinctly.

F. Give me your pen. I never wrote my name, ill as it may be written, with greater eagerness.

G. I applaud you; and trust that your example will be followed by millions. Another word before we part. Recollect your opinion about your club in the village, and tell me what ought to be the consequence, if the King alone were to insist on making laws, or in altering them at his will and pleasure.

F. He too must be expelled.

G. Oh! but think of his standing army, and of the militia, which now are his in substance, though ours in form.

F. If he were to employ that force against the nation, they would, and ought to resist him, or the state would cease to be a state.

G. What if the great Accountants, and great Lawyers, the Lillys and Spelmans of the nation, were to abuse their trust, and cruelly injure, instead of faithfully serving the public?

F. We must request the King to remove them, and make trial of others; but none should implicitly be trusted.

G. But what if a few great Lords or wealthy men were to keep the King himself in subjection, yet exert his force, lavish his treasure, and misuse his name, so as to domineer over the people, and manage the Parliament?

F. We must fight for the King and ourselves.

G. You talk of fighting, as if you were speaking of some rustic engagement at a wake, but your quarter-staffs would avail you little against bayonets.

F. We might easily provide ourselves with better arms.

G. Not so easily; when the moment of resistance came, you would be deprived of all arms; and those who should furnish you with them, or exhort you to take them up, would be called traitors, and probably put to death.

F. We ought always, therefore, to be ready; and keep each of us a strong firelock in the corner of his bed-room.

G. That

G. That would be legal as well as rational. Are you, my honest friend, provided with a musket?

F. I will contribute no more to the club, and purchase a firelock with my savings.

G. It is not necessary. I have two, and will make you a present of one, with complete accoutrements.

F. I accept it thankfully; and will converse with you at your leisure on other subjects of this kind.

G. In the meanwhile, spend an hour every morning in the next fortnight, in learning to prime and load expeditiously, and to fire and charge with bayonet firmly and regularly. I say every morning, because, if you exercise too late in the evening, you may fall into some of the legal snares which have been spread for you by those gentlemen, who would rather secure game for their table, than liberty for the nation.

F. Some of my neighbours, who have served in the militia, will readily teach me; and perhaps the whole village may be persuaded to procure arms, and learn their exercise.

G. It cannot be expected that the villagers should purchase arms; but they might easily be supplied, if the gentry of the nation would spare a little from their vices and luxury.

F. May they turn to some sense of honour and virtue!

G. Farewel, at present; and remember, "That a free state is only a more numerous and more powerful club, and that he only is a free man, who is member of such a state."

F. Good morning, Sir, you have made me wiser and better than I was yesterday; and yet, methinks, I had some knowledge in my own mind of this great subject, and have been a politician all my life without perceiving it.

THE HONOURABLE THOMAS ERSKINE.

GENTLEMEN OF THE JURY,

MY learned and respectable friend (for so upon this, as upon all other occasions, he has approved himself) having informed the court that he meant to call no other witness to support the prosecution, you are now in possession of the whole of the evidence on which the prosecutor has ventured to charge my reverend friend and client, the Dean of Saint Asaph, with a seditious purpose to excite disloyalty and disaffection to the person of his King, and an armed rebellion against the state and constitution of his country; which evidence is nothing more than his direction to another to publish this dialogue containing in itself nothing seditious, with an advertisement prefixed to it containing a solemn protest against all sedition.

The only difficulty therefore, gentlemen, which I feel in resisting so false and malevolent an accusation, is to be able to repress the feelings of my mind, excited by its folly and injustice, within those bounds which leave its faculties their natural and unclouded operations; for I solemnly declare to you, that if he had been indicted as a libeller of our holy religion, only for publishing that the world was made by its Almighty Author, my astonishment could not have been greater than it is at this moment, to see this little book, which I hold in my hand, presented by a Grand Jury of English subjects, as a libel upon the government of England.—Every sentence contained in it, if the interpretation of words is to be settled, not according to fancy, but by the common rules of language, is to be found in the brightest pages of English literature, and in the most sacred volumes of English laws: if any one sentence from the beginning to the end of it be seditious or libellous, the Bill of Rights (to use the language of the advertisement prefixed to it) was a seditious libel; the revolution was a wicked rebellion; the existing government is a traiterous conspiracy against the hereditary monarchy of England; and our gracious Sovereign, whose title, I am persuaded, we are all of us prepared

to defend with our blood, is an usurper of the crowns of these kingdoms.

That all these absurd, preposterous, and treasonable conclusions, follow necessarily and unavoidably from a conclusion upon *this evidence*, that this dialogue is a libel; I follow the example of my learned friend, who has pledged his personal veracity in support of his sentiments, and asserts, upon *my honour*, to be unaltered, and I believe I may say, unalterable opinion, formed upon the most mature deliberation; and I choose to place that opinion in the very front of my address to you, that you may not, in the course of it, mistake the energies of truth and freedom for the zeal of professional duty.

This declaration of my own sentiments, even if my friend had not set me the example by giving you his, I should have thought my duty in this cause; for although, in ordinary cases, where the private right of the party accused is alone in discussion, and no general consequences can follow from the decision, the advocate and the private man ought in sound discretion to be kept asunder; yet there are occasions when such separation would be treachery and meanness. In a case where the dearest rights of society are involved in the resistance of a prosecution, where the party accused is (as in this instance) but a mere name; where the whole community is wounded through his sides, and where the conviction of the private individual is the subversion or surrender of public privileges, the advocate has a more extensive charge. The duty of a patriot citizen then mixes itself with his obligation to his client, and he disgraces himself, dishonours his profession, and betrays his country, if he does not step forth in his genuine character, and vindicate the rights of all his fellow-citizens, which are attacked through the medium of the man he is defending. Gentlemen, I do not mean to shrink from that responsibility upon this occasion; I desire to be considered the fellow-criminal of the defendant, if by your verdict he should be found one, by publishing in advised speaking (which is substantially equal in guilt to the publication of which he is accused before you) my hearty approbation of every sentiment contained in this little book; promising, here in the face of the world, to publish them upon

upon every suitable occasion, amongst that part of the community within the reach of my precept, influence, and example. If there be any more prosecutors of this denomination abroad among us, they know how to take advantage of these declarations.

Gentlemen, when I reflect upon the danger which has often attended the liberty of the press in former times, from the arbitrary proceedings of avaricious, unprincipled, and dependant judges, raised to their situations without abilities or worth, in proportion to their servility to power, I cannot help congratulating both the public and my client, that you are to try this indictment with the assistance of the learned judge before you; too much instructed in the laws of this land to mislead you by mistake, and I hope too conscientious and independent to misinstruct you by design.

The days indeed are now, thank God, long past, when upon trials of this sort, judges and jurymen were constantly pulling in different directions; the court endeavouring to annihilate altogether the province of the jury, and the jury in return listening with disgust, jealousy, and alienation, to the directions of the court. Now they are tried, and I hope, ever will be tried, with that harmony which is the beauty of our legal constitution; the jury preserving their independence in judging of that *malus animus*, which is the essence of every crime; but listening to the opinion of the judge upon the evidence, and upon the law, with that respect and attention which dignity, learning, and honest intention in a magistrate, must and ought always to carry along with it.

Having received my earliest information in my profession from the learned judge himself *, and having daily occasion to observe his able administration of justice, you may believe that I anticipate nothing from the bench unfavourable to my innocent client; and I have experienced his regard in too many instances, not to be sure of every indulgence that is personal to myself.

* Mr. Erskine was for some time one of the judge's pupils, as a special pleader, before he was raised to the bench.

These considerations enable me with more freedom to make my address to you upon the merits of this prosecution, in the issue of which your own general rights, as members of a free state, are not less involved than the private rights of the individual I am defending.

Gentlemen, my reverend friend stands before you under circumstances new and extraordinary, and I might add *harsh and cruel* ! For he is not tried in the *forum* where he lives, according to the wise and just provisions of our ancient laws; he is not tried by the vicinage, who, from their knowledge of general character and conduct, were held by our wise and humane ancestors to be the fittest, or rather the only judges of that *malus animus* which is the essence of every crime; he is deprived of that privilege by the arts of the prosecutor, and is called before you, who live in another part of the country, and who, except by vague reputation, are utter strangers to him.

But the prosecution itself, abandoned by the public, and left in the hands of an obscure individual, is not less extraordinary and unjust, unless, as it is a circumstance which palpably refutes the truth of the accusation; for, if this little book be a libel at all, it is a libel upon the state and constitution of the nation, and not upon any person under the protection of its laws: it attacks the character of no man in this or any other country; and therefore no man is individually or personally injured or offended by it. If it contain matter dangerous or offensive, the state alone can be endangered or offended.

And are we then reduced to that miserable condition in this country, that, if discontent and sedition be publicly exciting amongst the people, the charge of suppressing it devolves upon Mr. Jones? My learned friend, if he would have you believe that this dialogue is seditious and dangerous, must be driven to acknowledge, that Government has grossly neglected its trust; for if, as he says, it has an evident tendency in critical times to stir up alarming commotions, and to procure a reform in the representation of the people by violence and force of arms; and if, as he likewise says, a public prosecution is a proceeding calculated to prevent these probable consequences: what excuse is he prepared to make for that government, which, when according to the evidence of his own witness an ap-
plication

plication was made to it for that express purpose, positively, and on deliberation refused to prosecute? What will he say for one learned gentleman * who dead is lamented, and for another † who living is honoured by the whole profession; both of whom, on the first appearance of this dialogue, were charged with the duty of prosecuting all offenders against the state; yet who not only read it day after day in pamphlets and news-papers, without stirring against the publishers; but who, on receiving it from the Lords of the Treasury by official reference, opposed a prosecution at the national expence? What will he say of the successors of these gentlemen, who hold their offices at this hour, and who have ratified the opinions of their predecessors by their own conduct? And what, lastly, will he say in vindication of Majesty itself to my knowledge not unacquainted with the subject, yet from whence no orders issued to the inferior servants of the state?

So that, after Mr. Fitzmaurice, representing this dialogue as big with ruin to the public, has been laughed at by the King's ministers at the Treasury; by the King himself, of whom he had an audience; and by those appointed by his wisdom to conduct all prosecutions by the public; yet you are still called upon to believe that it is a libel dangerous and destructive; and that while the state, neglected by those who are charged with its preservation, is tottering to its centre, the falling constitution of this ancient nation is happily supported by Mr. Jones, who, like another Atlas, bears it upon his shoulders.

Mr. Jones then, who sits before you, is the only man in England who accuses the defendant; he alone takes upon himself the important office of dictating to his Majesty, of reprobating the proceedings of his ministers, and of superseding his attorney and solicitor-general; and shall I insult your understandings by supposing that this accusation proceeds either from patriotism and public spirit in himself, or in that other gentleman whose deputy he appears to be upon this occasion?

Whether such a supposition would not indeed be an insult, his conduct as a public prosecutor will best illustrate.

* Mr. Wallace, then Attorney-General.

† Mr. Lee, late Attorney, then Solicitor-General.

He originally put the indictment in a regular course of trial in the very neighbourhood where its operations must have been most felt, and where, if criminal in its objects, the criminality must have been the most obvious. A jury of that country was assembled to try it; and the Dean having required my assistance on the occasion, I travelled two hundred miles with great inconvenience to myself, to do him that justice which he was entitled to as my friend and fellow-citizen; and to pay to my country that tribute which was due from me when the liberty of the press was invaded.

The jury thus assembled, was formed from the first characters in that country; men who would have willingly doomed to death the wretch who, in the language of the indictment, had sought to excite disaffection to the person of the King, and an armed rebellion against his government: yet, when such a jury was empannelled, and such names found upon it as Sir Watkyn Williams Wynne, and others not less respectable, this public spirited prosecutor, who had no other object than public justice, was confounded and appalled; he said to himself, this will never do; for all these gentlemen know, not only that this paper is not itself a libel, but that it neither was nor could be published by the Dean with a libellous intention; and, what is worse than all, they are men of too proud an honour to act, upon any persuasion or authority, against the conviction of their own consciences. But how shall I get rid of them? They are already struck and empannelled, and neither integrity nor sense are challenges to jurors.

Gentlemen, in this dilemma, he produced an affidavit, which appeared to me not very sufficient for the purpose of evading the trial, but which as those who upon that occasion had to decide that question upon their oaths, were of a different opinion: I shall not support my own by any arguments, meaning to conduct myself to-day, as I always have and shall, with reverence to the administration of justice. I shall, therefore, content myself with stating that the affidavit contained no other matter than that there had been published at Wrexham, an extract from Dr. Towers's Biography, containing accounts of trials for libels published above a century ago, from which the jurors (if it had fal-

len in their way) might have been informed of their right to judge their fellow-citizens for crimes affecting their liberties or their lives; a doctrine not often disputed, and never without the vindication of it by the greatest and most illustrious names in the law. But, says this public-spirited prosecutor, if the jury are to try this, I must withdraw my prosecution; for they are men of honour and sense; they know the constitution of their country, and they know the Dean of Saint Asaph; and I have therefore nothing left but to apply to the judges, suggesting that the minds of the special jury are so prejudiced by being told that they are Englishmen, and as such have the power of acquitting a defendant accused of a crime if they think him innocent, that they are unfit to sit in judgment upon him. Gentlemen, the scheme succeeded; and I was put in my chaise, and wheeled back again, with the matter in my pocket which had postponed the trial; matter which was to be found in every shop in London, and which had been equally within the reach of every juryman who had sat upon a jury since the times of King Charles the Second.

Gentlemen, in this manner, above a year ago, Mr. Jones deprived my reverend friend of an honourable acquittal in his own country; and it is a circumstance material in the consideration of this indictment; because, in the administering public justice, you will, I am persuaded, watch with jealousy to discover whether public justice is the end and object of the prosecution; and in trying whether my reverend client proceeded *malò animò* in the publication of this dialogue, you will certainly obtain some light from examining *quo animò*, the prosecutor has arraigned him before you.

When the indictment was brought down again to trial at the next following assizes, there were no more pamphlets to form a pretext for procrastination. I was surprised, indeed, that they did not employ some of their own party to publish one, and have recourse to the same device which had been so successful before: but this mode either did not strike, or was thought to be but fruitlessly delaying that acquittal which could not be ultimately prevented.

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The prosecutor, therefore, secretly sued out a writ of *certiorari* from the Court of King's Bench, the effect of which was to remove the indictment from the Court of Great-Sessions in Wales, and to bring it to trial as an English record in an English county. Armed with this secret weapon to defeat the honest and open arm of justice, he appeared at Wrexham, and gave notice of trial, saying to himself, " I will take no notice that I have the King's writ, till I see the complexion of the jury; if I find them men fit for my purpose, either as the prostitutes of power, or as men of little minds, or from their insignificance equally subject to the frown of authority, and the blandishments of corruption, so that I may reasonably look for a sacrifice, instead of a trial, I will then keep the *certiorari* in my pocket, and the proceedings will of course go forward: but if, on the contrary, I find such names as I found before; if the gentlemen of the county are to meet me; I will then, with his Majesty's writ in my hand, discharge them from giving that verdict of acquittal, which their understandings would dictate, and their consciences impose."

Such, without any figure, I may assert to have been the secret language of Mr. Jones to himself, unless he means to slander those gentlemen in the face of this court, by saying that the jurors, from whose jurisdiction he, by his *certiorari* withdrew the indictment, were not impartial, intelligent, and independent men; a sentiment which he dares not presume even to whisper, because in public or in private he would be silenced by all who heard it.

From such a tribunal this public-spirited prosecutor shrunk a second time; and just as I was getting out of my chaise at Wrexham, after another journey from the other side of the island, without even notice of an intention to postpone the trial, he himself in person (his counsel having, from a sense of honour and decency, refused it) presented the King's writ to the Chief Justice of Chester, which dismissed the Deaf for ever from the judgment of his neighbours and countrymen, and which brings him before you to-day.

What opinion then must the prosecutor entertain of your honour, and your virtues, since he evidently expects from

you a verdict, which it is manifest from his conduct he did not venture to hope for from such a jury as I have described to you?

Gentlemen, I observe an honest indignation rising in all your countenances on the subject, which with the arts of an advocate, I might easily press into the service of my friend; but as his defence does not require the support of your resentments, or even of those honest prejudices to which liberal minds are but too open without excitation, I shall draw a veil over all that may seduce you from the correctest and the severest judgment.

Gentlemen, the Dean of St. Asaph is indicted by the Prosecutor, not for having published this little book; that is not the charge: but he is indicted of publishing a false, scandalous, and malicious libel, and of publishing it (I am now going to read the very words of the charge) “ with
“ a malicious design and intention to diffuse among the
“ subjects of this realm jealousies and suspicions of the
“ King and his Government; to create disaffection to his
“ person; to raise seditions and tumults within the king-
“ dom; and to excite his Majesty’s subjects to attempt by
“ armed rebellion and violence, to subvert the state and
“ constitution of the nation.”

These are not words of form, but of the very essence of the charge. The Defendant pleads that he is not guilty, and puts himself upon you, his country; and it is fit, therefore, that you should be distinctly informed of the effect of a general verdict of guilty on such an issue, before you venture to pronounce it. By such a verdict you do not merely find, that the Defendant published the paper in question; for if that were the whole scope of such a finding, involving no examination into the merits of the thing published, the term guilty might be wholly inapplicable and unjust, because the publication of that which is not criminal cannot be a crime, and because a man cannot be guilty of publishing that which contains in it nothing which constitutes guilt. This observation is confirmed by the language of the record; for if the verdict of guilty involved no other consideration than the simple fact of publication, the legal term would be, *that the Defendant PUBLISHED*, not that he was GUILTY
of

of publishing: yet those who tell you that a general verdict of guilty comprehends nothing more than the fact of publishing, are forced in the same moment to confess, that if you found that fact alone, without applying to it the epithet of *guilty*, no judgment or punishment could follow from your verdict; and they therefore call upon you to pronounce that guilt which they forbid you to examine into, acknowledging at the same time, that it can be legally pronounced by none but you:—a position shocking to conscience, and insulting to common sense.

Indeed, every part of the record exposes the absurdity of a verdict of *guilty*, which is not founded on a previous judgment that the matter indicted is a libel, and that the Defendant published it with a criminal intention; for if you pronounce the word *guilty*, without meaning to find sedition in the thing published, or in the mind of the publisher, you expose to shame and punishment that innocence which you mean to protect; since the instant that you say the defendant is *guilty*, the gentleman who sits under my lord, is bound by law to record him *guilty in manner and form as he is accused*; i. e. guilty of publishing a seditious libel with a seditious intention: and the court above is likewise bound to put the same construction on your finding. And thus, without enquiry into the only circumstance which can constitute guilt, and without meaning to find the Defendant guilty, you may be seduced into a judgment which your conscience may revolt at, and your speech to the world deny; but which the authors of this system have resolved that you cannot explain to the court, that is to punish the Defendant on the authority of your intended verdict of acquittal.

As a proof that this is the plain and simple state of the question, I might venture to ask the learned judge, what answer I should receive from the Court of King's-Bench, if you were this day to find the Dean of St. Asaph guilty, but without meaning to find it a libel, or that he published it with a wicked and seditious purpose; and I, on the foundation of your wishes and opinions, should address myself thus to the court when he was called up for judgment:

“ My Lords, I hope that, in mitigation of my Client's punishment, you will consider that he published it with
“ perfect

“ perfect innocence of intention, believing, on the highest
 “ authorities, that every thing contained in it was agree-
 “ able to the laws and constitution of his country; and
 “ that your lordships will further recollect that the jury, at
 “ the trial, gave no contrary opinion, finding only the
 “ fact of publication.”

Gentlemen, if the patience and forbearance of the judges permitted me to get to the conclusion of such an absurd speech, I should hear this sort of language from the court in answer to it: “ We are surprised, Mr. Erskine, at every
 “ thing we have heard from you. You ought to know
 “ your profession better, after seven years practice of it, than
 “ to hold such a language to the court: you are estopped by
 “ the verdict of guilty, from saying he did not publish with
 “ a seditious intention; and we cannot listen to the decla-
 “ rations of jurors in contradiction to their recorded judg-
 “ ment.”

Such would be the reception of such a defence; and thus you are asked to deliver over the Dean of St. Asaph into the hands of the judges of a court humane and liberal indeed, but who could not betray their oaths, because you had set them the example by betraying yours, and who would therefore be bound to believe him criminal, because you had said so on the record, though in violation of your genuine opinions—opinions which, as ministers of the law, they could neither act upon, nor even advert to their existence.

The conduct of my friend, Mr. Bearcroft, upon this occasion, who always conducts himself with wisdom and discretion, is a farther confirmation of the truth of all these observations: for, if your duty had been confined to the simple question of publication, his address to you would have been nothing more, than that he would call his witnesses to prove the fact that the Dean published this paper, instead of enlarging to you, as he has done with great ability, on the libellous nature of the publication. There is, therefore, a gross inconsistency in his address to you, not from want of his usual precision, but because he is hampered by his good sense in stating an absurd argument, which happens to be necessary for his purpose; for he sets out with saying, that if you shall be of opinion it

has no tendency to excite sedition, you must find him *not guilty*; and ends with telling you, that whether it has or has not such tendency, is a question of law for the court, and foreign to the present consideration.

It requires, therefore, no other faculty than that of keeping awake, to see through the fallacy of such doctrines; and I shall therefore proceed to lay before you the observations I have made upon this dialogue, which you are desired to censure as a libel.

I have already observed, and it is indeed on all hands admitted, that if this be libellous at all, it is a libel on the public government, and not the slander of any private man.

Now to constitute a libel upon the government, one of two things appears to me to be absolutely necessary. The publication must either arraign and misrepresent the general principles on which the constitution is founded, with a design to render the people turbulent and discontented under it; or, admitting the good principles of the government in the abstract, must accuse the existing administration with a departure from them.

Let us try this little pamphlet by these touchstones, and let the Defendant stand or fall by the test.

The beginning of this pamphlet, and indeed the evident and universal scope of it, is to render our happy constitution, and the principles on which it is founded, well understood by all that part of the community which are out of the pale of that knowledge by liberal studies and scientific reflections;—a purpose truly public-spirited, and which could not be better effected than by having recourse to familiar comparisons drawn from common life, more suited to the frame of unlettered minds than abstract observations.

It was this consideration that led Sir William Jones, a gentleman of great learning and excellent principles, to compose this dialogue, and who, immediately after avowing himself the author of it, was appointed by the King to be one of the supreme judges of our Asiatic empire; where, if we reflect on the transactions of its governments, he would hardly have been selected to preside, if his work had been thought seditious.

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Of this I am sure, that his intentions were directly the contrary, and that he thought and felt, as all men of sense must feel and think, that there was no mode so likely to inculcate obedience to government in an Englishman, as to make himself acquainted with its principles; since the English constitution must always be loved, cherished, and revered, exactly in the proportion that it is understood.

He therefore divested his mind of all those classical refinements which so remarkably characterise it, and composed this simple and natural dialogue between a gentleman and a farmer; in which the gentleman, meaning to illustrate the great principles of public government, by comparing them with the lesser combinations of society, asks the farmer, what is the object of the little club in the village of which he is a member; and if he is a member of it on compulsion, or by his free consent?—If the president is self-appointed, or rules by election?—If he would submit on his taking the money from the box without the vote of the members?—with many other questions of a similar tendency; and being answered in the negative, he very luminously brings forward the analogy by making the gentleman say to him, “did it never occur to you that every state is but a great culb?” or, in other words, that the greater as well as the lesser societies of mankind are held together by social compacts, and that the government of which you are a subject, is not the rod of oppression in the hands of the strongest, but is of your own creation; a voluntary emanation from yourself, and directed to your own advantage?

Mr. Bearcroft, sensible that this is the just and natural construction of that part of the dialogue, is very desirous to make you believe that the other part of it, touching the reform in the representation of the people in parliament, has no reference to that context; but it is to be connected with all that follows about bearing arms. I must therefore beg your attention to that part of the publication, which will speak plainly for itself.

The gentleman says to the farmer, on his telling him he had no vote, “Do you know that six men in seven have, like you, no voice in the election of those who make the laws which bind your property and life?” and then

then asks him to sign a petition which has for its object to render elections co-extensive with the trusts which they repose.

And is there a man upon the jury who does not feel that all the other advantages of our constitution are lost to us untill this salutary object is attained ; or who is not ready to applaud every man who seeks to attain it by means that are constitutional ?

But, according to my friend, the means proposed were not constitutional, but rebellious. I will give you his own words, as I took them down : " The gentleman was saying, very intelligibly, Sir, I desire you to rebel, to clothe yourself in armour, for you are cheated of your inheritance. How are you to rectify this ? How are you to right yourselves ? Learn the Prussian exercise."

But, how does my friend collect these expressions from the words of the passages which are shortly these : " And the petition which I desired you to sign has only for its object the restoration of your right to chuse your law makers."

I confess I am at a loss to conceive how the Prussian exercise finds its way into this sentence. It is a most martial way of describing pen and ink. Cannot a man sign a petition without tossing a firelock ? I, who have been a soldier, can do either ; but I do not sign my name with a gun.

There is, besides, another difficulty in my friend's construction of the sentence ; for the object of the petition is the chusing of law-makers. But, according to him, there is to be an end of all law-makers, and of all laws ; for neither can exist under the Prussian exercise : and he must be a whimsical scholar who tells a farmer to sign a petition for the improvement of government ; his real purpose being to set it upon the die of a rebellion, whether there should be any government at all.

But, let me ask you, gentlemen, whether such strained constructions are to be tolerated in a criminal prosecution, when the simple and natural construction of language falls in directly with the fact ? For you cannot but know, that, at the time when this dialogue was written, the table of the House of Commons groaned with petitions presented to

the House from the most illustrious names, and characters, representing the most important communities in the nation; not with the threat of the Prussian exercise, but with the prayer of humility and respect to the legislature, that some immediate step should be taken to avert that ruin which the defect in the representation of the people must sooner or later bring upon this falling empire.

I do not choose to enter into political discussions here. But we all know, that the calamities which have fallen upon this country have proceeded from that fatal source; and every wise man must be therefore sensible, that a reform, if it can be attained without confusion, is a most desirable object.

But whether it be or be not desirable, is an idle speculation here, because, at all events, the subject has a right to petition for what he thinks beneficial; and however visionary you may think his petition, you cannot deny it to be constitutional and legal; and I may venture to assert, that this dialogue is the first abstract speculative writing which has been attacked as a libel since the revolution; and from Mr. Beareroff's admission, that the proceeding is not prudent, I may venture to forfeit that it will be the last.

If you pursue this part of the dialogue to the conclusion, the false and unjust construction put upon it becomes more palpable: "Give me your pen," said the farmer, "I never wrote my name ill as it may be written, with greater eagerness." Upon which the gentleman says, "I applaud you, and trust that your example will be followed by millions." What example?—Arms?—Rebellion?—Disaffection? No! but that others might add their names to the petition which he had advised him to sign, until the voice of the whole nation reached parliament on the subject. That is the plain and obvious construction; and it is not long since that those persons in parliament with whom my friend associates, and with whom he acts, affected at least to hold the voice of the people of England to be the rule and the guide of parliament; and the Gentleman in the dialogue knowing that the universal voice of the community could not be wisely neglected by the Legislature, only expressed his

his wish that the petitions should not be partial, but universal.

With the expression of this wish every thing in the dialogue upon the subject of representation finally closes;—and if you will only honour me with your attentions for a few moments longer, I will shew you that the rest of the Pamphlet is the most abstract speculation on Government, to be found in print; and that I was well warranted, when I told you some time ago that all its doctrines were to be found in the brightest pages of English learning, and in the most sacred volumes of English laws.

The subject of the petition being finished, the gentleman says, “Another word before we part. What ought to be the consequence, if the King alone were to insist on making laws, or on altering them at his will, and pleasure?” To which the farmer answers, “He too must be expelled.” “Oh, but think of his standing army,” says the gentleman, “and of the militia which now are his in substance, though ours in form.” Farmer, “If he were to employ that force against the nation, they would, and ought to resist him, or the state would cease to be a state.” And now you will see that I am not contending for things that are wrong; for if this was pointed particularly to excite rebellion against the King of England, and to lead the people to believe that his Majesty was, in the present course of his government, breaking through the laws, and therefore, on the principles of the constitution, was subject to expulsion, I admit that my client ought to be expelled from this and every other community. But is this proved? No! It is not even asserted. I say this in the hearing of a judge deeply learned in the laws, and who is bound to tell you, that there is nothing in the indictment which even charges such an application of the general doctrine. The gentleman who drew it is likewise very learned in his profession; and if he had intended such a charge, he would have followed the rules delivered by the twelve Judges in the House of Lords, in the case of the King against Horne, and would have set out without saying, that at the time of publishing the libel in question, there were petitions from all parts of England, desiring a reform in the representation of the

people in parliament; and that the Defendant knowing this, and intending to stir up rebellion, and to make the people believe that his Majesty was ruling contrary to law, and ought to be expelled, caused to be published the dialogue. This would have been the introduction to such a charge; and then, when he came to the words, "He too must be expelled," he would have said, by way of innuendo, *meaning thereby to insinuate, that the King was governing contrary to law, and ought to be expelled*; which innuendo, though void in itself, without antecedent matter by way of introduction, when coupled with the introductory averment on the record, would have made the charge complete. Then I should have known what I had to defend my Client against, and should have been prepared with witnesses to shew you the absurdity of supposing that the Dean ever imagined, or meant to insinuate, that the King was governing contrary to law. But the penner of the indictment, well knowing that you never could have found such an application, and that, if it had been averred as the true meaning of the dialogue, the indictment must have fallen to the ground for want of such finding; the innuendo was prudently left out: and yet you are desired by Mr. Bearcroft, to take that to be the true construction which the prosecutor durst not venture to submit to you by an averment in the indictment, and which not being averred, is not at all before you.

But if you attend to what follows, you will observe that the writing is purely speculative, comprehending all the modes by which a government may be dissolved; for it is followed with the speculative case of injury to a government from bad ministers, and its constitutional remedy.— Says the Gentleman, "What, if the great accountants and great lawyers of the nation were to abuse their trust, and cruelly injure, instead of faithfully serving the public, what in such case are you to do?" Farmer, "We must request the King to remove them, and make trial of others, but none should implicitly be trusted." Request the King to remove them! why, according to Mr. Bearcroft, you had expelled him the moment before.

Then follows a third speculation of a government dissolved by an aristocracy, the King remaining faithful to his

his trust; for the Gentleman proceeds thus. "But what if a few great lords or wealthy men, were to keep the King himself in subjection, yet exert his force, lavish his treasure, and misuse his name, so as to domineer over the people and manage the parliament?" Says the Farmer, "We must fight for the King and for ourselves." What? for the fugitive King whom the Dean of St. Asaph had before expelled from the crown of these kingdoms! Here again the ridicule of Mr. Bearcroft's construction stares you in the face; but taking it as an abstract speculation of the ruin of a state by aristocracy, it is perfectly plain.

When he first puts the possible case of regal tyranny, he states the remedy of expulsion; when of bad ministers to a good King, the remedy of petition to the throne; and when he supposes the throne to be overpowered by aristocratic dominion, he then says, "We must fight for the King and for ourselves."

If there had been but one speculation; viz. of regal tyranny, there might have been plausibility at least in Mr. Bearcroft's argument; but when so many different speculations are put, altogether repugnant to and inconsistent with each other, common sense tells every man that the writer is speculative, since no state of facts can suit them all.

Gentlemen, these observations, striking as they are, must lose much of their force, unless you carry along with you the writing from which they arise; and therefore I am persuaded that you will be permitted to day to do what juries have been directed by courts to do on the most solemn occasions, i. e. to take the supposed libel with you out of court, and to judge for yourselves whether it be possible for any conscientious or reasonable man to fasten upon it any other interpretation than that which I have laid before you.

If the dialogue is pursued a little further, it will be seen, that all the exhortations to arms are pointed to the protection of the King's government, and the liberty of the people derived from it. Says the Gentleman, "you talk of fighting as if you were speaking of some rustic engagement; but your quarter staff would avail you
" little

" little against bayonets." Farmer, " We might easily
 " provide ourselves with better arms." " Not so easily,"
 says the Gentleman; " you ought to have a strong fire-
 " lock." What to do? look at the context.—For God's
 sake do not violate all the rules of grammar, by refusing to
 look at the next antecedent! take care to have a firelock.
 For what purpose? " to fight for the King and yourself,"
 in case the King, who is the fountain of legal govern-
 ment, should be kept in subjection by those great and
 wealthy lords, who might abuse his authority and insult
 his title. This, I assert, is not only the genuine and na-
 tural construction, but the only legal one it can receive
 from the court on this record; since, in order to charge
 all this to be not merely speculative and abstract, but
 pointing to the King and his government, to the expul-
 sion of our gracious Sovereign, whom my reverend friend
 respects and loves, and whose government he reverences
 as much as any man who hears me, there should have been
 an introduction that there were such views and intentions
 in others, and that he knowing it, and intending to im-
 prove and foment them, wrote so and so; and then on
 coming to the words, *that the King must be expelled*, the
 sense and application should have been pointed by an aver-
 ment, that he thereby meant to insinuate to the people of
 England, that the present King ought in fact to be expel-
 led; and not speculatively, that under such circumstances
 it would be lawful to expel a King.

Gentlemen, if I am well founded in thus asserting, that
 neither in law nor in fact is there any seditious applica-
 tion of these general principles, there is nothing further
 left for consideration, than to see whether they be war-
 ranted in the abstract;—a discussion hardly necessary un-
 der the government of his present Majesty, who holds
 his crown under the act of settlement made in consequence
 of the compact between the King and people at the revo-
 lution.

Gentlemen, what part you or I might have taken, if
 we had lived in the days of the Stuarts, and in the unhap-
 piest of their days which brought on the revolution, is
 foreign to the present question: whether we should have
 been found among those glorious names, who from well-
 directed

directed principle supported that memorable Act, or amongst those who from mistaken principle opposed it, cannot affect our judgments to day: whatever part we may conceive we should or ought to have acted, we are bound by the acts of our ancestor, who determined that there existed an original compact between the King and people; who declared, that King James had broken it, and who bestowed the crown upon another.

The principle of that memorable revolution is fully explained in the bill of rights, and forms the most unanswerable vindication of this little book. The misdeeds of King James are drawn up in the preamble to that famous statute; and it is worth your attention, that one of the principal charges in the catalogue of his offences is, that he caused several of those subjects (whose right to carry arms is to-day denied by this indictment) to be disarmed in defiance of the laws.

Our ancestors having stated all the crimes for which they took the crown from the head of their fugitive sovereign, and having placed it on the brows of their deliverer, mark out the conditions on which he is to wear it. They were not to be betrayed by his great qualities, nor even by the gratitude they owed him, to give him an unconditional inheritance in the throne; but enumerating all their ancient privileges, they tell their new King in the body of the law, that while he maintains those privileges, and no longer than he maintains them, *he is King*.

The same wise caution which marked the acts of the revolution, is visible in the act of settlement on the accession of the House of Hanover, by which the crown was again bestowed, upon the strict condition of governing according to law, maintaining the protestant religion, and not being married to a Papist.

Under this wholesome entail, *which again vindicates every sentence in this Book*, may his Majesty and his posterity hold the crown of these kingdoms for ever! a wish in which I know I am fervently seconded by my reverend Client, and with which I might call the whole country to vouch for the conformity of his conduct.

But my learned friend, knowing that I was invulnerable here, and afraid to encounter those principles on which his
own

own personal liberty is founded, and on the assertion of which his well earned character is at stake in the world, says to you with his usual artifice; "Let us admit that there is no sedition in this dialogue, let us suppose it to be all constitutional and legal, yet it may do mischief: why tell the people so?"

Gentlemen, I am furnished with an answer to this objection, which I hope will satisfy my friend, and put an end to all disputes among us; for upon this head I will give you the opinion of Mr. Locke, the greatest whig that ever lived in this country, and likewise of Lord Bolingbroke, the greatest tory in it; by which you see that whigs and tories who could never accord in any thing else, were perfectly agreed upon the propriety and virtue of enlightening the people on the subject of government.

Mr. Locke on this subject speaks out much stronger than the dialogue. He says on in his treatise on government, "Wherever law ends tyranny begins; and whoever, in authority, exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject which the law allows not, ceases in that to be a magistrate, and acting without authority, may be opposed as any other man who by force invades the rights of another. This is acknowledged in subordinate magistrates. He that hath authority by a legal warrant to seize my person *in the street*, may be opposed as a thief and a robber if he endeavours to break *into my house* to execute it on me there, although I know he has such a warrant as would have empowered him to arrest me abroad. And why this should not hold in the highest as well as in the most inferior magistrate, I would gladly be informed. For the exceeding the bounds of authority is no more a right in a great than in a petty officer, *in a King than in a constable*; but is so much the worse in him, that he has more trust put in him, and more extended evil follows from the abuse of it."

But then Mr. Locke, knowing that the most excellent doctrines, when they are perverted by wicked men who have their own private objects to lead them to that perversion, or by ignorant men who do not understand them, takes

takes the very objection of my learned friend, Mr. Bearcroft, and puts it as follows into the mouth of his adversary, in order that he may himself answer and expose it: "But there are who say that it lays a foundation for rebellion." Gentlemen, you will do me the honour to attend to this, for one would imagine Mr. Bearcroft had Mr. Locke in his hand when he was speaking.

"But there are who say that it lays a foundation for rebellion, to tell the people that they are absolved from obedience when illegal attempts are made upon their liberties, and that they may oppose their magistrates when they invade their properties, contrary to the trust put in them; and that, therefore, the doctrine is not to be allowed, as libellous, dangerous, and destructive of the peace of the world."

But that great man instantly answers the objection which he had raised himself in order to destroy it, and truly says, "such men might as well say, that the people should not be told that honest men may oppose robbers or pirates, lest it should excite to disorder and bloodshed."

What reasoning can be more just? for if we were to argue from the possibility that human depravity and folly may turn to evil what is meant for good, all the comforts and blessings which God, the author of indulgent nature, has bestowed upon us, and without which we should neither enjoy nor indeed deserve our existence, would be abolished as pernicious, till we were reduced to the fellowship of beasts.

The Holy Gospels could not be promulgated; for though they are the foundation of all the moral obligations which unite men together in society, yet the study of them too often conducts weak minds to enthusiasm, madness, or false opinions.

The use of pistols should be forbid; for though they are necessary instruments of self-defence, yet men often turn them revengefully upon one another in private quarrels.

Fire ought to be prohibited; for though under due regulations it is not only a luxury but a necessary of life,
1 yet

yet the dwellings of mankind and whose cities are often laid waste and destroyed by it.

Medicines and drugs should not be sold promiscuously; for though, in the hands of skilful physicians, they are the kind restoratives of nature, yet they may come to be administered by quacks, and operate as poisons.

There is nothing, in short, however excellent, which wickedness or folly may not pervert from its intended purpose. But if I tell a man, that if he takes my medicine in the agony of disease, it will expel it by the violence of its operation, will it induce him to destroy his constitution by taking it while he is in health? Just so, when a writer speculates on all the ways by which human governments may be dissolved, and points out the remedies which the history of the world furnishes from the experience of former ages; is he, therefore, to be supposed to prognosticate instant dissolution in the existing government, and to stir up sedition and rebellion against it?

Having given you the sentiments of Mr. Locke, published three years after the accession of King William, who caressed the author and raised him to the highest trusts in the state, let us look at the sentiments of a Tory, on that subject, still more celebrated both in the republic of letters, and on the theatre of the world: I speak of the great Lord Bolingbroke, who was in arms to restore King James to his forfeited throne, and who was anxious to rescue the jacobites from what he thought a scandal on them, viz. that, because from the union of so many human rights centered in the person of King James, they preferred and supported his hereditary title on the footing of our own ancient civil constitutions; that they, therefore, believed in his claim to govern *jure divino*, independant of the law.

Their doctrine of passive obedience, which this prosecution seems to assert to be the law, and which certainly is the law, if this dialogue, which denies it, be a libel, was resented above half a century ago by this great writer even in a tract written while an exile in France on account of his treason against the House of Hanover. "The duty of the people," says his lordship "is now settled upon so clear a foundation, that no man can hesitate how far he is to obey, or doubt upon what occasions he is to resist."

“ *sist*. Conscience can no longer battle with the under-
 “ standing; we know that we are to defend the crown
 “ with our lives and fortunes, as long as the crown pro-
 “ tects us, and keeps strictly to the bounds within which
 “ the laws have confined it. We know likewise, that we
 “ are to do it no longer.”

Having finished three volumes of masterly and eloquent
 discussions on our government, he concludes, with stating
 the duty imposed on every enlightened mind to instruct the
 people on the principles of our government, in the follow-
 ing animated passage: “ The whole tendency of these dis-
 “ courses is to inculcate a rational idea of the nature of our
 “ free government into the minds of all my countrymen,
 “ and to prevent the fatal consequence of those slavish prin-
 “ ciples which are industriously propagated through the
 “ kingdom, by wicked and designing men. He who la-
 “ bours to blind the people, and to keep them from instruc-
 “ tion on those momentous subjects, may be justly suspec-
 “ ted of sedition and disaffection; but he who makes it his
 “ business to open the understandings of mankind, by lay-
 “ ing before them the true principles of their government,
 “ cuts up all faction by the roots; for it cannot but inter-
 “ est the people in the preservation of their constitution,
 “ when they know its excellence and its wisdom.”

But, says Mr. Bearcroft, again and again, “ Are the
 “ multitude to be told all this?” I say as often on my
 part, yes. I say, that nothing can preserve the govern-
 ment of this free and happy country, in which under the
 blessing of God we live; nothing can make it endure to
 all future ages, but its excellence and its wisdom being
 known not only to you and the higher ranks of men, who
 may be overborne by a contentious multitude, but by dis-
 seminating among the great body of the people the true
 principles on which it is established; which shews them,
 that they are not the hewers of wood and the drawers of
 water to men who avail themselves of their labour and in-
 dustry; but that government is a trust proceeding from
 themselves; an emanation from their own strength; a be-
 nefit and a blessing, which stood the test of ages; that they
 are governed because they desire to be governed, and yield a
 1 2 voluntary

voluntary obedience to the laws because the laws protect them in the liberties they enjoy.

Upon these principles I assert with men of all denominations and parties, who have written on the subject of free governments, that this dialogue, so far from misrepresenting or endangering the constitution of England, must disseminate obedience and affection to it as far as it reaches; and that the comparison of the great political institutions with the little club in the village, is a decisive mark of the honest intention of its author.

Does a man rebel against the president of his club while he fulfils his trust?—No; because he is of his own appointment, and acting for his comfort and benefit. This safe and simple analogy lying within the reach of every understanding, is therefore adopted by the scholar as the vehicle of instruction; and wishing the peasant to be sensible of the happy government of his country, and to be acquainted with the deep stake he has in its preservation, truly tells him, that a nation is but a great club, governed by the same consent, and hanging together by the same voluntary compact; impressing upon his mind the great theory of public freedom, by the most familiar allusions to the little but delightful intercourses of social life, by which men derive those benefits that come home the nearest to to their bosoms.

Such is the wise and innocent scope of this dialogue, which after it had been repeatedly published without censure, and without mischief, under the public eye of government in the capital, is gravely supposed to have been circulated by my reverend friend many months afterwards, with a malignant purpose to overturn the monarchy by an armed rebellion.

Gentlemen, if the absurdity of such a conclusion, from the scope of the dialogue itself, were not self evident, I might render it more glaring by adverting to the condition of the publisher. The affectionate son of a Reverend Prelate, not more celebrated for his genius and learning than for his warm attachment to the constitution, and in the direct road to the highest honours and emoluments of that very church which, when the monarchy falls, must be buried in its ruins: nay, the publisher a dignitary of the same church

church himself at an early period of his life, and connected in friendship with those who have the dearest stakes in the preservation of the government, and who, if it continues, may raise him to all the ambition of his profession.

I cannot therefore forbear from wishing that somebody, in the happy moments of fancy, would be so obliging as to try at a reason, in compassion to our dulness, why my Reverend Friend should aim at the destruction of the present establishment; since you cannot but see, that the moment he succeeded, down comes his father's mitre, which leans against the crown, and away goes his own deanery, with all the rest of his livings; and neither you nor I have heard any evidence to enable us to guess at what he is looking for in their room.

Yet, in the face of all these absurdities, and without a colour of evidence from his character or conduct in any part of his life, he is accused of sedition; and under the false pretence of public justice, dragged out of his own country, deprived of that trial by his neighbours, which is the right of the meanest man who hears me, and arraigned before you, who are strangers to those public virtues, which would in themselves be an answer to this malevolent accusation. But when I mark your sensibility and justice in the anxious attention you have bestowed; when I reflect upon your characters, and observe from the pannel (though I am personally unknown to you) that you are men of rank in your own country, I know how these circumstances of injustice will operate; and I therefore freely forgive the prosecutor for having fled from his original tribunal.

Gentlemen, I come now to a point very material for your consideration; on which even my learned friend and I, who are brought here for the express purpose of disagreeing in every thing, can avow no difference of opinion; on which judges of old and of modern times, and lawyers of all interests and parties, have ever agreed; namely, that even if this innocent paper were admitted to be a libel, the publication would not be criminal, if you, the jury, saw reason to believe that it was not published by the Dean with a criminal intention. It is true, that if a paper containing seditious and libellous matter be published, the publisher is *prime facie* guilty of sedition, the bad intention being

being a legal inference from the act of publishing; but it is equally true, that he may rebut that inference, by shewing that he published it innocently.

This was declared by Lord Mansfield, in the case of the King against Woodfall; where his Lordship said, that the fact of publication would in that instance have constituted guilt, if the paper was a libel; because the defendant had given no evidence to the jury to repel the legal inference of guilt, as arising from the publication; but he said at the same time, in the words that I shall read to you, that such legal inference was to be repelled by proof.

“ There may be cases where the fact of the publication
“ even of a libel may be justified or excused as lawful or
“ innocent; for no fact which is not criminal, even though
“ the paper be a libel, can amount to a publication of
“ which a defendant ought to be found guilty.”

I read these words from Burrow's reports, published under the eye of the court, and they open to me a decisive defence of the Dean of St. Asaph upon the present occasion, and give an evident jurisdiction to acquit him, even if the law upon libels were as it is laid down to you by Mr. Bearcroft: for if I shew you, that the publication arose from motives that were innocent, and not seditious, he is not a criminal publisher, even if the dialogue were a libel, and, according even to Lord Mansfield, ought not to be found guilty.

The Dean of St. Asaph was one of a great many respectable Gentlemen, who, impressed with the dangers impending over the public credit of the nation, exhausted by a long war, and oppressed with grievous taxes, formed themselves into a committee, according to the example of other counties, to petition the legislature to observe great caution in the expenditure of the public money. This dialogue being written by Sir William Jones, a near relation of the Dean by marriage, was either sent, or found its way to him in the course of public circulation. He knew the character of the author; he had no reason to suspect him of sedition or disaffection; and saw and believed it to be, what I at this hour believe, and have represented it to you, a plain, easy manner of shewing the people the great interest they had in petitioning parliament for every thing beneficial

injurious to the public. It was accordingly the opinion of the Flintshire committee, and not particularly of the Dean as an individual, that the dialogue should be translated into Welsh, and published. It was accordingly delivered, at the desire of the committee, to a Mr. Jones, for the purpose of translation. This gentleman, who will be called as a witness, told the dean a few days afterwards, that there were persons, not indeed from their real sentiments, but from spleen and opposition, who represented it as likely to do mischief, from ignorance, and misconception, if translated and circulated in Wales.

Now, what would have been the language of the Defendant upon this information, if his purpose had been that which is charged upon him by the indictment? He would have said, "If what you tell me is well-founded, *hasten the publication*; my object is sedition; my plan is, that there may be a rebellion in Wales; I am sure I shall never raise one here, by the dissemination of such a pamphlet in English: therefore let it be instantly translated, if the ignorant inhabitants of the mountains are likely to collect from it that it is time to take up arms."

But Mr. Jones will tell you, that, on the contrary, the instant he suggested that such an idea, absurd and unfounded as he felt it, had presented itself from any motives to the mind of any man, the Dean impressed as he was with its innocence and its safety, instantly acquiesced, and recalled, even on his own authority, the intended publication by the committee; and it never was translated into the Welsh tongue at all, nor circulated amongst that multitude, which Mr. Bearcroft is so desirous of keeping in darkness; as if obedience to free government, like bigotry to priestcraft, was to be upheld by ignorance and delusion.

And here the Dean's connection with this dialogue would have ended, if Mr. Fitzmaurice, who never lost any occasion of defaming and misrepresenting him, had not thought fit, near three months after the idea of translation was abandoned, to reprobate and condemn the Dean's conduct at the public meetings of the county, in the severest terms, for his former intention of circulating the dialogue in Welsh; declaring that its doctrines were
seditionous,

sedition, treasonable, and repugnant to the principles of our government.

It was upon this occasion that the Dean, naturally anxious to redeem his character from the unjust aspersions of having intended to undermine the constitution of his country; conscious that the epithets applied to the dialogue were false and unfounded; and thinking that the production of it would be the most decisive refutation of the groundless calumny cast upon him, directed a few English copies of it to be published in vindication of his former opinions and intentions, prefixing an advertisement to it, which plainly marks the spirit in which he published it. For he there complains of the injurious misrepresentations I have adverted to, and impressed with the sincerest conviction of the innocence, or rather the merit, of the dialogue, makes his appeal to the friends of the revolution in his justification.

[*Mr. Erskine here read the advertisement to the jury, as prefixed to the dialogue.*]

Now, gentlemen, if you shall believe upon the evidence of the witnesses whom I shall bring before you, and of the advertisement prefixed to the publication itself (which is artfully kept back, and forms no part of the indictment), that the Dean, upon the authority of Sir William Jones who wrote it, and of the other great writers on the principles of our government, and of the history of the country itself, really thought the dialogue innocent and meritorious, and that his single purpose in publishing was the vindication of his character from sedition; then he is not guilty of this indictment, which charges the publication with a wicked intent to excite disaffection to the King, and rebellion against his government,

Actus non facit reum nisi mens sit rea, is the great maxim of penal justice, and stands at the top of the criminal page, in every volume of our humane and sensible laws. The hostile mind is the crime which it is your duty to decypher; and I am sure you will discharge it with the charity of Christians; refusing to adopt a harsh and cruel construction, when one that is fair and honourable is more reconcileable, not only with all probabilities, but with that
evidence

evidence which you are sworn to make the foundation of your verdict. For the Prosecutor rests on the single fact of publication, without the advertisement, and without being able to cast an imputation upon the Defendant's conduct; or even in observation to assign a motive to give every similitude to the charge.

I shall, on the other hand, shew you that this sower of sedition has been lately honoured with the public thanks of the county in which he lives, for his constitutional independent conduct; and shall bring before you the highest characters that inhabit it, to prove the anxiety which, in every part of his life, he has manifested for the public, and the zeal with which, in stations both religious and civil, he has served it.

Gentlemen, after the length of time, which very contrary to my inclination, I have detained you, I am sure you will be happy to hear that there is but one other point to which my duty obliges me to direct your attention.

I should, perhaps, have said nothing more concerning that particular province which belongs to you as a jury, upon this occasion, than the little I touched upon it at the beginning, if my friend Mr. Bearcroft had not compelled me to it, by drawing a line around you, saying (I hope with the same effect that King Canute said to the sea), "thus far shalt thou go." But since he has thought proper to coop you in, it is my business to let you out: and to give the greater weight to what I am about to say to you, I have no objection that every thing which I may utter shall be considered as proceeding from my own private opinions; and that not only my professional character, but my more valuable reputation as a man, and a member of society, may stand or fall by the principles which I shall lay down for the regulation of your judgments.

This is certainly a bold thing for me to say, since what I am about to deliver may clash in some degree, *though certainly it will not throughout*, with the decision of a great and reverend judge who has administered the justice of this country for above half a century with singular advantage to the public, and distinguished reputation to himself; but whose extraordinary faculties and general integrity,

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which

which I should be lost to all sensibility and justice if I did not acknowledge with reverence and affection, could not protect him from much obliquy when he appeared as the supporter of those doctrines which I am about to controvert. I shall certainly never join in the calumny that followed them, because I believe he acted upon that, as upon all other occasions, with the strictest integrity; an admission which it is my duty to make, which I render with great satisfaction, and which proves nothing more than that the greatest of men are fallible in their judgments, and warns us to judge from the essences of things, and not from the authority of names, however imposing.

Gentlemen, the opinion I allude to is, that *libel or not libel* is a question of law for the judge, your jurisdiction being confined to the fact of publication. And if this was all that was meant by the position (though I could never admit it to be consonant with reason or law), it would not affect me in the present instance, since all that it would amount to, would be, that my lord, and not you, would deliver that opinion which would guide the present verdict. But what I am afraid of upon this occasion is, that neither of you are to give it; for so my friend has expressly put it. "My lord," says he, "will probably not give you his opinion whether it be a libel or not, because, as he will tell you, it is a question open upon the record, and that if Mr. Erskine thinks the publication innocent, he may move to arrest the judgment." Now this is just the most artful and the most mortal stab that can be given to justice, and to my innocent Client. All I wish is his lordship's judgment to guide yours in determining whether this pamphlet be or be not a libel; because, knowing the scope of his understanding and professional ability, I have a moral certainty that his opinion would be favourable. If therefore libel or no libel be a question of law, as is asserted by Mr. Bearcroft, I call for his lordship's judgment upon that question, according to the regular course of all trials where the law and the fact are blended; in all which cases the notorious office of the judge is to instruct the consciences of the jury to draw a correct legal conclusion from the facts in evidence before them. A jury are no more bound to return a special verdict in cases of libel, than

than upon other trials criminal and civil, where law is mixed with fact; but are to find generally upon both, receiving, as they constantly do receive in every court at Westminster, the opinion of the Judge both on the evidence and the law.

Say the contrary who will, I assert this to be the genuine, unrepealed constitution of England; and therefore, if the learned judge shall tell you that this pamphlet is in the abstract a libel; though I shall not agree that you are therefore bound to find the Defendant guilty unless you think so likewise, yet I shall certainly think that it ought to have very great weight with you, and that you should not rashly, and without great consideration, go against it. But, if you are only to find the fact of publishing, which is not even disputed; and the judge is to tell you, that the matter being on the record, he shall shut himself up in silence, and give no opinion at all as to the libellous and seditious tendency of the paper, and yet shall nevertheless expect you to affix the epithet of guilty to the publication of a thing the guilt of which you are forbid, and he refuses, to examine; miserable indeed is the condition into which we are fallen! For if you, following such directions, bring in a verdict of guilty, without finding the publication a libel, or the publisher seditious; and I afterwards, in mitigation of punishment, apply to that humanity and mercy which is never deaf when it can be addressed consistently with the law; I shall be told in the language I before put in the mouths of the Judges, "You are estopped, Sir, by the verdict; We cannot hear you say your Client was mistaken, but not guilty; for, had that been the opinion of the jury, they had a jurisdiction to acquit him."

Such is the way in which the liberties of Englishmen are by this new doctrine to be shuffled about from jury to court, without having any solid foundation to rest on.

Gentlemen, I call this the effect of new doctrines, because I do not find them supported by that current of ancient precedents which constitutes English law. The history of seditious libels is perhaps one of the most interesting subjects which can agitate a court of justice, and my friend thought it prudent to touch but very slightly upon it.

We all know, that by the immemorial usage of this country, no man in a criminal case could ever be compelled to plead a special plea;—for although our ancestors settled an accurate boundary between law and fact, obliging the party Defendant who could not deny the latter to shew his justification to the court; yet a man accused of a crime had always a right to throw himself by a general plea upon the justice of his Peers; and on such general issue, his evidence to the jury might be ever as broad and general as if he had pleaded a special justification. The reason of this distinction is obvious.

The rights of property depend upon various intricate rules, which require much learning to adjust, and much precision to give them stability; but crimes consist wholly in intention; and of that which passes in the breast of an Englishman as the motives of his actions, none but an English jury shall judge.—It is therefore impossible, in most criminal cases, to separate law from fact; and consequently whether a writing be or be not a libel, never can be an abstract legal question for judges. And this position is proved by the immemorial practice of our courts, the forms of which are founded in legal reason: for that very libel over which it seems you are not to entertain any jurisdiction, is always read, and often delivered to you out of court for your consideration.

The administration of criminal justice in the hands of the people, is the basis of all freedom. While that remains there can be no tyranny, because the people will not execute tyrannical laws on themselves. Whenever it is lost, liberty must fall along with it, because the sword of justice falls into the hands of men, who, however independent, have no common interest with the mass of the people.

Our whole history is therefore chequered with the struggle of our ancestors to maintain this important privilege, which in cases of libel has been too often a shameful and disgraceful subject of controversy. For the ancient government of this country not being founded (like the modern) upon that knowledge which the people have of its excellence, but supported by ancient superstitions, and the lash
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of power, it is no wonder that it saw the seeds of its destruction in a free press.

Printing therefore, upon the revival of letters, when the lights of philosophy led to the detection of these prescriptive usurpations, was considered as a matter of state, and subjected to the controul of licensors appointed by the crown: and although our ancestors had stipulated by magna charta, that no freeman should be judged but by his peers, the courts of star-chamber and high commission, consisting of privy-counsellors erected during pleasure, opposed themselves to that freedom of conscience and civil opinion, which even then were laying the foundations of the revolution.

Whoever wrote on the principles of government was pillored in the star-chamber, and whoever exposed the errors of a false religion was persecuted by the commission-court.

But no power can supersede the privileges of men in society, when once the lights of science have arisen amongst them. The prerogatives which former princes exercised with safety, and even with popularity, were not to be tolerated in the days of the first Charles, and our ancestors insisted that these arbitrary tribunals should be abolished. Why did they insist upon that abolition? Was it that the question of libel, which was their principle jurisdiction, should be determined only by the judges at Westminster? — In the present times, even such a reform, though very defective, might be consistent with reason, because the judges are now free, honourable, independent, and sagacious men; but in those days they were wretches; libels upon all judicature; and instead of admiring the wisdom of our ancestors, if that had been their policy, I should have held them up as lunatics, to the scoff of posterity; since in the times when these unconstitutional tribunals were supplanted, the courts at Westminster-hall were filled with judges equally the tools of power as those in the star-chamber; and the whole policy of the change consisted in that principle, which was then never disputed; viz. That the judges at Westminster in criminal cases were but a part of the court, and could only administer justice through the medium of a jury.

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When the people, by the aid of an upright parliament, had thus succeeded in reviving the constitutional trial by the country, the next course taken by the ministers of the Crown, was to pollute what they could not destroy: Sheriffs devoted to power were appointed, and corrupt juries packed to sacrifice the rights of their fellow citizens, under the mask of a popular trial. This was practiced by Charles the Second; and was made one of the charges against King James, for which he was expelled the kingdom.

When juries could not be found to their minds, judges were daring enough to brow-beat juries, and to dictate to them what they called the law; and in Charles the Second's time an attempt was made, which, if it had proved successful, would have been decisive.

In the year 1670 Penn and Mead, two quakers, being indicted for *sedition* preaching to a multitude *tumultuously* assembled in Gracechurch-street, were tried before the Recorder of London, who told the jury that they had nothing to do but to find whether the defendants had preached or not; for that, as to whether the matter or the intention of their preaching were seditious, these were questions of law and not of fact, which they were to keep to at their peril.

The jury, after some debate, found Penn guilty of speaking to people in Gracechurch-street; and on the Recorder's telling them that they meant, no doubt that he was speaking to a *tumult* of people there; he was informed by the foreman, that they allowed of no such words in their finding, but adhered to their former verdict. The recorder refused to receive it, and desired them to withdraw, on which they again retired, and brought in a general verdict of acquittal; which the court considering as a contempt, set a fine of forty marks upon each of them; and to lie in prison till paid. Edward Bushel, one of the jurors (to whom we are almost as much indebted as to Mr. Hampden, who brought the case of *ship money* before the Court of Exchequer) refused to pay his fine, and, being imprisoned in consequence of the refusal, sued out his writ of Habeas Corpus, which, with the cause of his commitment, (*viz. his refusing to find according to the direction of the court in matter of law*), was returned by the sheriffs of London

London to the Court of Common Pleas; when Lord Chief Justice Vaughan, to his immortal honour, addressed himself thus:

“ We must take off this veil and colour of words, which
 “ make a shew of being something, but are in fact no-
 “ thing. If the meaning of these words, *finding against*
 “ *the direction of the court in matter of law*, be, that if
 “ the judge, having heard the evidence given in court
 “ (for he knows no other), shall tell the jury upon this evi-
 “ dence, that the law is for the crown, and they, under
 “ the pain of fine and imprisonment, are to find accord-
 “ ingly; every man sees that the jury is but a trouble-
 “ some delay, great charge, and of no use in determining
 “ right and wrong; and therefore the trials by them may
 “ be better abolished than continued; which were a strange
 “ and new-found conclusion, after a trial so celebrated
 “ for many hundreds of years in this country.”

He then applied this sound doctrine with double force to criminal cases, and discharged the upright juror from his illegal commitment.

This determination of the right of juries to find a general verdict was never afterwards questioned by succeeding judges; not even in the great case of the seven bishops, on which the dispensing power and the personal fate of King James himself in a great measure depended.

These conscientious Prelates were, you know, imprisoned in the Tower, and prosecuted by information for having petitioned King James the second to be excused from reading in their churches the declaration of indulgence which he had published contrary to law. The trial was had at the bar of the Court of King's Bench, when the Attorney General of that day, rather more peremptorily than my learned friend (who is much better qualified for that office, and whom I should be glad to see in it), told the jury, that they had nothing to do but with the bare fact of publication, and said he should therefore make no answer to the arguments of the Bishops counsel, as to whether the petition was or was not a libel. But Chief Justice Wright (no friend to the liberty of the subject, and with whom I should be as much ashamed to compare my Lord, as Mr. Bearcroft to that Attorney General) interrupted him, and said, “ Yes, Mr. Attorney, I will tell you what they offer, which it
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will lie upon you to answer: they would have you shew the jury how this petition has disturbed the government, or diminished the King's authority. So say I. I would have Mr. Bearcroft shew you, gentlemen, how this dialogue has disturbed the King's Government, excited disloyalty and disaffection to his person, and stirred up disorders within these kingdoms.

In the case of the Bishops, Mr. Justice Powell followed the Chief Justice, saying to the jury, "I have given my opinion; *but the whole matter is before you, gentlemen, and you will judge of it.*" Nor was it withdrawn from their judgment; for although the majority of the court were of opinion that it was a libel, and had so publicly declared themselves from the bench, yet by the unanimous judgment of all the judges, after the court's own opinion had been pronounced by way of charge to the jury, the petition itself, which contained no innuendos to be filled up as facts, was delivered into their hands to be carried out of court, for their deliberation. The jury accordingly withdrew from the bar, carrying the libel with them; and (puzzled I suppose, by the infamous opinion of the judges) were most of the night in deliberation; all London surrounding the court with anxious expectation for that verdict, which was to decide whether Englishmen were to be free-men or slaves. Gentlemen, the decision was in favour of freedom, for the reverend fathers were acquitted; and though acquitted in direct opposition to the judgment of the court, yet it never occurred even to these arbitrary men who preceded in it to cast upon them a censure or a frown.

This memorable and never to be forgotten trial is a striking monument of the importance of these rights, which no juror should ever surrender; for if the legality of the petition had been referred as a question of law to the Court of King's Bench, the bishops would have been sent back to the Tower, the dispensing power would have acquired new strength, and perhaps the glorious æra of the revolution and our present happy constitution had been lost.

Gentlemen, I ought not to leave the subject of these doctrines, which in the libels of a few years past were imputed to the noble Earl of whom I formerly spoke, without acknowledging that Lord Mansfield was neither the original

nal author of them, nor the copier of them from these impure sources: it is my duty to say, that Lord Chief Justice Lee, in the case of the King against Owen, had recently laid down the same opinions before him. But then both of these great judges always conducted themselves on trials of this sort, as the learned judge conducts himself to-day; considering the jury as open to all the arguments of the Defendant's counsel. And particularly in the case of Owen, who was acquitted against the direction of the court, the present Lord Camden addressed the jury, not I as I am addressing you, but with all the eloquence for which he is so justly celebrated in the world.

The practice, therefore, of these great judges is a sufficient answer to their opinions; for if it be the law of England, that the jury may not decide on the question of libel, the same law ought to extend its authority to prevent their being told by counsel that they may.

There is indeed no end of the absurdities which such a doctrine involves; for suppose that this prosecutor, instead of indicting my reverend friend for publishing this dialogue, had indicted him for publishing the bible, beginning at the first book of Genesis, and ending at the end of the Revelations, without the addition or subtraction of a letter, and without an *innuendo* to point out a libellous application, only putting in at the beginning of the indictment that he published it with a blasphemous intention:—On the trial for such a publication Mr. Bearcroft would gravely say, “Gentlemen of the jury, you must certainly find by your verdict, that the Defendant is guilty of this indictment, i. e. guilty of publishing the bible with the intentions charged by it. To be sure every body will laugh when they hear it, and the conviction can do him no possible harm; for the Court of King’s Bench will determine that it is not a libel, and he will be discharged from the consequences of the verdict.”

Gentlemen, I defy the most ingenious man living to make a distinction between that case and the present; and in this way you are desired to sport with your oaths, by pronouncing my reverend friend to be a criminal, without either determining yourselves, or having a determination, or even an insinuation from the judge, that any crime has been committed; following strictly that famous and res-

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pectable precedent of Radamanthus, judge of hell, who punishes first, and afterwards institutes an enquiry into the guilt.

But it seems your verdict would be no punishment, if judgment on it was afterwards arrested. I am sure, if I thought the Dean so lost to sensibility as to feel it no punishment, he should find another counsel to defend him. But I know his nature better. I know that, conscious as he is of his own purity, he would leave this court hanging down his head in sorrow, if he was held out by your verdict a seditious subject, and a disturber of the peace of his country; and that he would feel the arrest of judgment, which would follow in the term upon his formal appearance in court as a criminal, to be a cruel insult upon his innocence, rather than a triumph over the unjust prosecutors of his pretended guilt.

Let me, therefore, conclude, with reminding you, gentlemen, that if you find the Defendant guilty, not believing that the thing published is a libel, or that the intention of the publisher was seditious, your verdict and your opinion will be at variance, and it will then be between God and your own consciences to reconcile the contradiction.

As the friend of my Client, and the friend of my country, I shall feel much sorrow, and you yourselves will probably hereafter regret it, when the season of reparation is fled. But why should I indulge such unpleasant apprehensions, when in reality I fear nothing? I know it is impossible for English gentlemen, sitting in the place you do, to pronounce this to be a seditious paper; much less upon the bare fact of publication, explained by the prefixed advertisement, and the Defendant's general character and deportment, to give credit to that seditious purpose which is necessary to convert the publication even of a libel itself into a crime.

I beg pardon of my lord, and of you, gentlemen, for the long time I have trespassed upon your indulgent and patient attention: nothing, indeed, but the duty I owe my Client could have induced me to do it, after the fatigue I have sustained in a very long journey to appear before you.

EVIDENCE

EVIDENCE for the DEFENDANT.

EDWARD JONES, Esq; Sworn. Examined by

Mr. ERSKINE.

Q. You know the dialogue that has been the subject of the discussion here to-day?

A. I have read it.

Q. Do you recollect it being the intention of the Flintshire Committee to translate that dialogue into the Welch tongue?

A. I was a member of that committee, and there was a resolution of that body for translating it into Welch.

Q. There was a commission given to have it done?

A. There was to Mr. Lloyd of ~~Carmarthen~~.

Q. That was by the desire of the committee?

A. It was.

Q. Put into your hands, in order to get it delivered to that person to translate it?

A. Yes.

Q. You afterwards, I believe, communicated to the Dean, that you thought it would be better not to proceed in the translation of it into Welch?

Mr. Bearcroft. Mr. Erskine, how can this be evidence?

Mr. Erskine, I will explain—It is to explain the advertisement prefixed to the dialogue by himself, and to shew that it is not merely a colour in the Defendant, but that he really did suppress the translation of it; that is to prove an act, not words.

Mr. Bearcroft. I still say it is not admissible evidence; but I shall not object to it; but let it be remembered.

Mr. Erskine. Did you mention that circumstance to the Dean?

A. Yes; the Dean mentioned he had received the pamphlet from Sir William Jones that morning, or so very lately that he had not had time to read it. Afterwards I wrote to the Dean, mentioning the resolutions we had come to, adopting some of the resolutions of the County of York, as to the extension of the representation; I did not agree entirely with it; I mentioned that, and also that

I had collected the opinion of some gentlemen that it might do harm, and that I thought he had better not publish it.

Q. You had collected the opinion of some gentlemen, and you thought it would do harm?

A. Yes; and that we had better not publish it. I communicated it to the Dean, that we had resolved at a prior meeting to call the county together, to consider of an address or petition, I believe. I did not see the Dean again till the morning of that county-meeting; I happened to come into the town at the same time he did. The Dean said to me immediately, "I am very much obliged to you for what you have communicated to me respecting the pamphlet; I should be exceedingly sorry to publish any thing that should tend to sedition; and I am exceedingly glad it was not translated."

Q. And in consequence of that declaration of the Dean it never was translated?

A. No, it never was.

Q. I ask when this happened?

A. On the morning of the last meeting of the committee; it was the 7th of January.

Q. Some people, I believe, had made pretty free with the Dean for wishing to publish a thing of that sort?

A. A great deal had been said about it.

Q. At the county-meeting?

A. There was something said about it at the county-meeting?

Q. Was it not very much reprehended by some persons at the county-meeting?

A. Yes.

Q. The date of the publication shews this was published three months afterwards in English. Mr. Fitzmaurice has been proved the prosecutor of this indictment originally. Do you recollect Mr. Fitzmaurice branding this publication with any injurious epithets?

A. Yes, I think I do; but what in particular I cannot recollect.

Cross examined by Mr. BEARCROFT.

Q. I am told, but it may be a mistake; I wish to understand you, that you and many of the friends of the Defendant, thought this had a seditious tendency, and you apprized the Dean of it, and said you thought it best for it not to be translated into Welch;

A. Not so; the gentlemen I conversed with were not all connected with it; many of his friends disliked it; there were several called upon me about it.

Q. I only want correctly to understand you.—The Dean said to you, that he should be sorry to publish any thing that tended to sedition?

A. Yes.

Q. That of course must have been an answer to some suggestion on your part that it did not tend to sedition?

A. My first communication to the Dean was in writing; I spoke to several gentlemen that had disliked the publication, and I said, in speaking to him that morning, that it might have some tendency of that sort; the people were alarmed for fear of it; I said I should be very sorry he should publish any thing of that sort.

Mr. Erskine. Q. That was as to the transaction?

A. Yes.

Q. You said it differed with respect to the resolutions of the York committee?

A. Yes; we had adopted some resolutions of the York committee, and that was my leading objection to a publication of this pamphlet, because this pamphlet contradicted exactly what we had resolved upon.

Mr. Bearcroft. How long after the proposed publication in Welch was this publication?

A. The meeting at which it was resolved was, I believe, in November, or somewhere thereabouts.

Court. Q. What time in January was this?

A. This meeting was on the 7th of January.

Mr. Bearcroft. I am desired to ask you, Whether you have not heard Doctor Shipley read this pamphlet and defend it in argument; and at the same time say, he knew very well that he was doing that with a rope about his neck, or some such expression?

A. That

A. That was in consequence of something that was previously said. It was publicly said at the meeting before the Dean said that, that it was treasonable: and many opprobrious epithets were made use of. The Dean then said, I am now called upon to shew that it is not seditious, and I read it with a rope about my neck. I speak this merely from memory; I have no notes.

Dean of St. Asaph. Whether there were not some other ironical expressions that I made use of besides that?

Mr. Bearcroft. In point of law that question is put irregularly.—You did not mean it; but it should be expressed in another way?

A. I did not know it was irregular.

Mr. Erskine. Did you collect from what the Dean said, that his opinion was, that the dialogue was legal and constitutional?

A. Certainly I did; the Dean again said, I really now, though I have read this in public, do not think it so bad a thing; and, I think we ought really to publish it in vindication of the committee.

Mr. Erskine. The Defendant being very singularly circumstanced, owing to the nature of the Welch judicature, and the impossibility of bringing on the trial in another place where persons who are criminals are supposed to be usually tried, I must beg your Lordship's indulgence, in a case where so much turns upon the intention, to call three or four gentlemen of great consequence and reputation in that county where the Dean lives, to prove his general deportment and behaviour.

Mr. Justice Buller. It is a thing I have never known done upon those occasions; it operates much in the same way as it would in cases of felony; it may have effect hereafter as to the punishment.

Mr. Bearcroft. I have no sort of objection to it.

Sir WATKIN WILLIAMS WYNN, Bart. sworn.

Examined by Mr. CORBETT.

Q. Are you acquainted, Sir Watkin, with the Dean of St. Asaph?

A. Yes.

Q. Pray

Q. Pray, sir, how long have you been acquainted with him?

A. Eight or nine years.

Q. During the time you have had any acquaintance with him, have you had any reason to suppose him a man likely to be guilty of that which is now imputed to him?

A. No.

Q. You have lived near him, was his neighbour, I believe?

A. We have lived sometimes near, and sometimes at a further distance.

Mr. Erskine. Q. You was one of the gentlemen of the jury, I believe, when the trial was put off?

A. Yes; and the only person sworn.

Sir ROGER MOSTYN, Bart. sworn. Examined by
Mr. ERSKINE.

Q. I believe, Sir, you are Lord Lieutenant of the county of Flint?

A. I am, sir.

Q. Do you know the Dean of St. Asaph?

A. Yes, sir.

Q. How long have you known him?

A. I have known him several years.

Q. Have you ever, in your capacity as Lord Lieutenant in that county, reposed any public trust in the Dean?

A. I proposed him for the commission of the peace, and afterwards appointed him a deputy lieutenant.

Q. How has he deported himself in those situations?

A. I believe very well; I do not know that he has acted as a deputy lieutenant, but as a justice of the peace.

Mr. Bearcroft. Mr. Erskine, you should content yourself with asking the general question.

Q. From what you know of the Dean, do you believe him a person capable of stirring up sedition or rebellion amongst his Majesty's subjects?

A. No.

MAJOR WILLIAMS sworn. Examined by
Mr. CORBETT.

Q. I believe you have been some years acquainted with the Dean of St. Asaph?

A. I have, sir.

Q. During the time of your acquaintance, did you ever believe him capable of sedition or rebellion?

A. No, sir.

Q. Did you ever know him guilty of doing any thing tending to excite sedition or rebellion?

A. Far from it; I think him one of the first that would quell it.

COLONEL MYDDELTON sworn. Examined by
Mr. BRODERICK.

Q. How long have you known the Dean of St. Asaph?

A. Near twelve years.

Q. What has been his character?—You will please to confine your evidence with regard to his being a peaceable subject or otherwise?

A. I have enjoyed the Dean's company at private meetings, with the justices at vestry-meetings, and at quarter sessions, and I never saw a man act with greater integrity than the Dean.

Q. Do you think him a man of quiet temper or otherwise?

A. I never saw him otherwise, and I must beg leave to say, I believe the King has not a better subject in his dominions than the Dean of St. Asaph.

Mr. BENNET WILLIAMS sworn. Examined by
Mr. ABBOT.

Q. I believe you have known the Dean of St. Asaph some years?

A. I have many years, ever since he came into the country.

Q. You have acted with him upon public and other occasions?

A. I have

A. I have constantly.

Q. During your acquaintance, has he conducted himself as a peaceable or as a factious man?

A. As a peaceable man.

Q. Do you think him capable of stirring up sedition against the King?

A. No; on the contrary I do not believe the King has a better subject.

Mr. Corbet. May it please your Lordship, and you gentlemen of the jury, to favour me a few words?

Mr. Justice Buller. What are you going to do? sit down.

Mr. Corbet. Is it not the practice, my lord?

Mr. Justice Buller. No, it is not.

MR. BEARCROFT.

GENTLEMEN, I rise, because it is my duty to do so in the character of counsel for the prosecution, to make some observations on the defence which has been attempted. If it has in it any spleen, malignity, or malevolence, those will be much mistaken who have chosen me to be the instrument of any such passions. I believe I may appeal to all that know my practice in the profession, whether I would ever debase myself so much, as to mix the private spleen of an individual, in the public character of a prosecutor, in the name of the King.

Gentlemen, the law of this country permits any subject, at his own peril, to use the name of the King to prosecute for public offences; but he that abuses that privilege, is open to the law; and if it were possible that you could put the Defendant in a situation to bring an action for a malicious prosecution, that law is open to him, he may find the prosecutor, and he may try that question with him. I shall not follow the learned Gentlemen of Counsel for the Defendant, into many wanderings and abberations from the true question you are to try. You

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are to try, is he guilty or not, whether he has been prosecuted with propriety? you have nothing to do with the summoning the first jury, and the second jury, and the reason why he comes to be tried by a third jury here in Shropshire have been complained of; a short answer will I give to that, but as I conceive, a full one. These proceedings are according to the law of the land; if there be any hardship in them, it is what the law permits, and it will be considered in that discretionary account, which is always taken, when the Defendant comes up for judgment; you have nothing to do with it, it could not be brought before you, nor is it in evidence; of course, therefore, I again call you back to the business that you have sworn to perform; that is, to try the issue joined between the King and the Defendant, and which you are sworn to determine according to the evidence.

Gentlemen, I did not know when I suddenly found myself in the situation of a prosecutor of the Dean of St. Asaph, that he was such a man as he is described to-day by his counsel; it is a great character, it is a strong one; I am sorry to encounter with such an one as he is represented. He is said to have demeaned himself so well in his own country, that he has received the thanks of his whole county; an honour indeed. If the whole county means what he says it does mean, that is, the thanks of a majority of every man of 21 years of age of that county. That is the county, according to the Dean's representation, and according to that definition of it, I hope it is his counsel is instructed to speak.

Gentlemen, a great many topics have been urged, in order to contrive the escape of the Defendant from his charge; every thing that has been heretofore said upon any great question of libel, has been produced upon the present occasion, and whatever may be done for his client, my learned friend has most undoubtedly acquitted himself well.

I shall take notice of a few of those arguments that appear the most specious. I own, that which struck my understanding as the most like reasoning was this: Here is a prosecution for an offence, which is contended to be replete with great public mischief. Application is
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made to the law officers of the Crown, to take up this prosecution: they have not done it, therefore (reasons my learned friend) it cannot be an offence; it cannot be an offence of any great importance. He has quoted me as well as others, because I made use of an expression, not unadvisedly, that I thought the prosecution not very prudent, at the same time I thought it legal. My learned friend has chosen to consider me in a light, which does not, that I am aware of, belong to me. He has made me a present to a party, who probably will not think me worth their acceptance; and has made a present of a party to me upon which I have no claim. He has challenged me to make an excuse for those traitors to their country, the present Attorney and Solicitor General, for not carrying on the prosecution. I shall pay them but little compliment upon the occasion, by supposing that they thought as I do. It does not follow, that it is wise and prudent to prosecute and punish every offence; it is often wiser to treat it with disdain and contempt. I believe it confidently, when I say it; I think the Reverend Defendant would have been shocked and disappointed, unless somebody had prosecuted. Those who distribute publications of this kind, however they may profess it, do not do it merely in the pure spirit of patriotism, that is the usual stalking horse to hide the private aim; but depend upon it, gentlemen, any man who commits himself to paper, and prints in the way the Defendant has done, his object is prosecution, that he may call it persecution, that he may be a saint, and almost a martyr amongst his particular friends and party: He must know, since he has turned his mind to considering subjects of this kind, the way to keep the party together is to prosecute; if there was no prosecution the party would vanish, and you would neither have himself at the head, or any members left if it had been unnoticed and unprosecuted. If this had not been thrown out as a kind of challenge, I should not have taken notice of it, because I am decidedly of opinion, it has nothing at all to do with the question; the sole question of this moment, whether the Defendant is guilty of this charge?

My learned friend has supposed, I have endeavoured to take away from you your power of jurisdiction and judgment,

ment, and to put you in a narrower line of consideration upon this occasion, than you ought to be placed by law.

I am sure there is nothing in this case that could lead me to stand forth (who am in possession, I hope, of some little degree of character) to hazard that, and become the subject of public odium in this private prosecution; by a private prosecutor, to state the law of libel otherwise than it is, in consequence of which, I well know, I should become the subject myself of a thousand libels. I do not mean it; and in order to set myself right in a few words, in the first place I readily admit this; There is no law in this country, thank God there is not (it would not be a free constitution if there were) that prevents a jury, upon a criminal question, if *they chuse it*, from finding a general verdict. I rejoice in it, I admire and revere that principle as the palladium of the constitution; But, Gentlemen, does it follow, that because the jury may do this, that they must do it; that it is fit and wise, and prudent, that they should do it. If it should be the misfortune of any of you to live in times, such as produced the prosecution for a libel against the seven bishops, do as your predecessors did, spurn all the Attorney General's doctrine, say, not guilty, and not a word more; you do your duty, and your names will be handed down to posterity with honour. But if there is a moderate, a temperate prosecution, and sober enquiry, in order to administer the law of the land as it is, upon the fact, that man is not your friend. Gentlemen, permit me to say, that asks you to take upon you to decide upon nice questions of law, if it be not necessary, I am sure you cannot wish it as sensible men.

Gentlemen, you may in an action of ejectment for an estate of 10,000*l.* a year, if you please, set the judges direction at naught; you may take upon you to decide upon the effect of a common recovery, or the operation of a fine; you may take upon you to say, my friend shall have possession, I will find a verdict for him; who says it may not be done? I don't say it will take effect, for thank God there is a power to correct and set aside those verdicts. Why? Because you will have abused your power: not that the very circumstance does not allow the power; they allow you may give a verdict, but they say it is wrong, and it must

must go to a new trial. I admit, therefore, you may if you please, each of you, take upon your shoulders points of law that have created difficulties and debates amongst the greatest men in the profession; but sure I am, from what you have heard, you will see no occasion to do it now. And certainly there is none, for you know of your own knowledge; and if you did not, my learned friend has informed you, by giving that high character to the present courts of justice, which I shall not repeat, nor should I have suggested, because I believe no Gentleman in England wants to be informed of it as a piece of news.

Gentlemen, my learned friend supposes I am arguing for an absurdity, and that I am insisting that you are not to determine upon the question libel or not libel, and that my Lord is not to give any opinion upon it; and therefore he draws this conclusion, nobody is to decide upon it, and yet his client is to be punished: To be sure, that is a gross absurdity; but I contend for no such thing. I say you are to decide upon this evidence, whether the Defendant has published the paper that has been produced? That he has published it has been proved, it has been admitted in argument; it has been triumphed in, and stated as a matter of merit of the Defendant. The fact of the publication of the paper then stands without controversy; and thus far, beyond all doubt, you are advanced in the cause. Then does it relate to the King and his Government? that I say, is the sole question, and simply the fact for the jury, that remains for you to decide, except that I suppose, when the pamphlet speaks of the King, you will suppose it speaks of the present King George the Third, and you will suppose, when it talks of the parliament and the administration, it speaks of the present Government, all that is alleged, and all that is for you to decide; and you are to say, whether it has this meaning, that is, speaking of the King and his Government. In that way I will put the question; Is this concerning the King and the Government? Aye or no? I am persuaded all that is fair, and I verily believe I shall hear it from the authority that presides to-day (and I am as ready to bow to it, without affectation, as my learned friend). It belongs solely to you. I believe this will be found to be law, after the most mature
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consideration, that libel or no libel is a question of law for the court. In the case my learned friend alluded to, of the King and Woodfall, as I take it, the noble Lord whom he has alluded to, by a description that particularly belongs to him, and marks him for one of the first of men, that noble Lord stated in the face of the court and the public the same doctrine. He said, this has been my constant direction to juries; if this is right, I am right; if this be wrong, I have been wrong, and desire to be corrected. I say this, upon such a subject, was a very solemn and not unbecoming appeal to the public and the profession: I believe he says, you well remember the opinion of those now dead, and those now living, not then present, speaking of the characters of worthy and learned persons, not at all likely to decide against the principles of the constitution, and it was expressly laid down by him to be law: that as to the epithets of malicious, seditious, wicked or false, or the adverbs belonging to those epithets maliciously, seditiously, and so on, that they were matters of law not for a jury to decide upon, for that appeared upon the face of the libel itself, when that libel was applied to the matter spoken of, and to the persons that are spoken of, as it stands charged upon the record. Is this a great trust reposed in the judges of the common law? Has not the common law reposed a much greater in the judges of this land from the beginning of time. Gentlemen, could you take upon you, or did you ever know; that any jury did, to decide what circumstances make homicide murder? No; all the authorities of the law have said that the question, whether murder or no murder is a question of law? You may read that in the ablest writer upon the subject, one of them at least, Lord Chief Justice Forster in terms says, as I remember, the question of murder or not murder is a question of law, for the judges or the jury may find special facts thereof; all that I am arguing for with respect to libels, that is law which is admitted to be law in every other case; but so it is, that the spirit of party being agitated and raised in every question of libel, there always has been, and will be a struggle upon every part of the proceedings, and a diversity of opinions arising from that spirit, and not from any real doubt or difficulty belonging to the subject. If, however, you will dismiss thereof
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all considerations of party, you will find yourselves in the ordinary situation that juries are put in; that is to say, that in a case where a question of law arises, you may shift it from your shoulders, and put it upon those who are better able to bear it. You may say, we will determine what belongs to us, you the judges will decide the law of the land, in whose breast it is reposed; we will content ourselves in deciding the fact. What the law is, I have stated already, libel or not libel is to be determined upon the face of the record. My learned friend says, I will not let the judge here, according to my doctrine, give any opinion upon it. Is there any thing uncommon in that, is not that the effect of every finding of a special verdict? I am sure the learned judge, who sits here to preside upon this trial, will tell you he does not sit here to decide great and difficult questions of law, but to direct the trial in the legal mode, and to lead you to legal conclusions, to decide upon certain facts; but when the law and fact can, by a sort of legal chymistry, be considered as a fair and exact discrimination of the different matters; I say, if the fact and law can be completely and fairly separated, he will take your opinion in point of fact. It must be taken so, and no judges can alter it; but that record, as to the point of law, will have the opinion of the whole court from whence it comes pronounced upon it.

And now, gentlemen, let me shew you the wisdom of our law, and the happiness of our constitution. If you will take upon you to give a general verdict, including the question of law, you may do it; but then you stop that process, which is of the utmost importance to the freedom of an innocent subject; you have stopped him short from the power of appealing to superior courts; but let it be separated from the fact, and be upon the record as it is here; the Dean is not bound by the decision of the court from whence this record comes, he has a right to appeal to the highest judicature of this nation, and to take the opinion of the House of Peers upon the subject; but if you decide the law in that box, it is stopped, and it can go no farther. Gentlemen, don't let us suppose that law is calculated for partial purposes, you see the wisdom and the equity

equity of it, you see how it leads to the fullest and fairest discussion, for some where there must be a power of decision. I contend, therefore, with respect to the epithets as you find them here, with the adverbs, they are not for you to determine; and I contend this, though they are found upon the record, yet if you were to find the Defendant guilty generally with that upon the record, I say the judges of the Court of King's Bench have a right to look upon the record, and to give their opinion upon it, and say, though this means such particular men and facts, yet we are of opinion, though the jury have thought, or seemed to think, it a libel. Upon all those epithets the court have a right to say, we look to the thing itself, and the law arising out of it; and we say in point of law it is not a libel; the court has a right to do that; so that in both ways of considering the question, I trust I have gone the length of satisfying you this is a question of fact only for you to determine, did he publish this? did he mean the King and his Government?

Now, gentlemen, as to that, my learned friend says that the scope of this pamphlet is perfectly innocent; nay, says he, it is not only innocent but meritorious, for it is to render our constitution well understood; and, says he, the Dean has written luminously upon the subject; he has made (says my learned friend) men wiser and better. Gentlemen, we know from a history in a book, the Reverend Dean must be well acquainted with, of a certain being which made one of our first parents much wiser and but little better. It appears to me, the Reverend Defendant, in the teeth of his general profession, has exactly so demeaned himself. He finds out an innocent farmer who is contented with his station, who is enjoying the blessings of this constitution in an humble state, which those above him, it seems, are so wanton as to quarrel with; he asks this man, whether he has never thought of something more than his happy situation as an husbandman that can pay his rent? No, says he, I never entertained ideas so high: He proceeds in the old way by which our first parents were seduced first by flattery, to lift him up above himself, to make him believe, as the serpent did Eve, that he was a being of a higher nature than he supposed: and, after all that
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socratical way of argument, he persuades this man all on a sudden, in the fury of madness, to say, Give me the petition, I will sign my name to it immediately. Now what is the object of this petition he is to sign? Why six men in seven, the inhabitants of this kingdom, have no vote, so says my learned friend; it is to render our constitution well understood; to persuade mankind every male being of age has a right to chuse his own representative; and for fear they should be robbed of that right they are to bear arms. Gentlemen, all of you have heard of a Polish Diet, and I apprehend you must agree with me, that this country would be much the worse for it if that scheme was to take effect; I say it is not the constitution, and, at the hazard of any libels that any set of men may chuse to throw at my head, I have no difficulty or hazard in saying, any man who maintains the proposition, so far as to say every man of twenty-one has a right to chuse his representative in parliament, is a fool or a knave, and if he believes himself he is an idiot, if he does not he is a knave; so I have stated my poor sentiments upon the subject, and I cannot help thinking it would not be very easy to answer them. These ideas are not so extravagant, perhaps, if the kingdom of England consisted of no more subjects than a district ten times as large inhabited by a few Indians half civilized, you would do well perhaps to have such a nation sit in rings and each give their opinions perhaps; but if there was a multitude consisting of millions, and you will see the glaring absurdity even if you were to suppose that once was the usage. How is a civilized state to be carried on when it is to be exercised by a multitude much too big and too large to have any effect, so it appears upon the face of it? Would not such a state say, Let us away with all kind of knowledge of this which can tend to nothing but confusion and sedition, and is not to the good of the kingdom.

Gentlemen, my learned friend has told you, that he is of opinion, the charge upon the indictment is not sufficiently clear; and he has stated, and chosen to suppose, it might have been drawn better, by inserting matter introductory, as he called it, which might have explained the business.

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Having said that the matter of law is for the consideration of the court, I should contradict myself if I answered that by any other manner than what I take to be perfectly legal. It is upon record. If there be any ground for the argument, it shews there is something deficient, and if you find the Defendant guilty the moment I sit down, yet he will in effect not be guilty, for judgment will be arrested, for want of that which the learned gentleman says ought to be there. Gentlemen, I love ingenuity, and I love my friend for his ingenuity, I seriously do, and he has given a very strong instance of it in a few arguments he has offered: Says he, If publishing a book be of itself a libel, the publication of the Bible is a libel, and the argument to make it so, must be, that it may be abused. Gentlemen, I don't charge the Reverend Dean with publishing the Bible; I don't charge him with that which I admit is not an offence, preaching to the multitude only is not an offence, it would become him; but other arguments are made use of, and my learned friend says, the best things may be abused. Fire, says he, is a very good servant, but a very bad master. That I acknowledge, but a man is a bad subject, and is guilty of an offence, who sets fire too near the houses of the neighbourhood, it is likely to be followed with great public inconvenience. It has been very lately solemnly determined upon consideration, that to set fire to your own house in a public street, is, upon account of the danger to the neighbourhood, a high offence. Medicines are good, says my friend, but it may be made a bad use of by men who step out of their own profession and turn quacks; but I protest I do not at all feel how these observations apply to the present case, unless, perhaps, in a way that will by no means assist the Defendant. My learned friend has quoted Mr. Locke and Lord Bolingbroke, they are great names, the head, he says, of the Whigs, and the head of the Tories. I wish we had some good heads now-a-days. There I agree with him; but are we to learn law and decorum, and have a decision in any sort of party disputes from the heads of parties. If you have a spark of party in any one of your breasts at this moment, extinguish it, you can, in order to do your duty as jurymen,

jurymen, as you ought to do. I love party, I honour it; I believe it preserves the constitution; factions are dreadful, and they destroy every constitution, but party preserves it. Let me see the Whigs and Tories nearly balanced, sometimes the one uppermost, sometimes the other. The vibration is wholesome whilst the center stands unmoved, it is like flux and reflux, of our famous river Thames, it keeps the water wholesome and purified. I like it, but let it not come into a court of justice.

My learned friend has quoted the case of the seven bishops. I should not be an Englishman if I did not love to hear of that case, but I do not love the misapplication of it, the circumstances that belong to it ought to have been stated, which my learned friend has not thought proper to speak of, it was a shameful and a wicked attempt, very unconstitutional at the instigation of the King, and by his own officers, to make an humble, a decent, and a private petition of Lords of parliament, who have a right to apply to the King upon public subjects, beseeching his Majesty's better consideration of certain measures then about to be carried into execution. It was said there the Chief Justice called upon the Attorney-General to prove this petition had disturbed the King's Government, he did well, it was not a libel in point of fact—they had not proved it a libel, nor any thing like it—nor even had they proved, as my learned friend suggests to me, the publication of it: for if I go with decency and propriety to my superiors to ask aid and assistance, and to represent (with a good meaning I grant you) the impropriety of a measure, and expressing a wish, it may be reconsidered, it is no publication in the case I speak of; I mean to keep it secret between myself and the persons applied to—but if this libel is published in a two penny pamphlet in England, and all but published in Welsh, for the purpose of extending it over the principality of Wales, it is a far different conduct. Gentlemen, if you look into the history of the trial of the seven bishops, you will find upon that ground it was considered as no publication: the case don't apply to the present, where beyond all doubt we have proved the publication; but did it remain unproved, and it were necessary for me to prove to you the publication tended to sedition, I thank my learned friend as

far as I find myself disposed to return thanks in the case of a prosecution, it is for the sake of the public. I thank my friend for having thought proper to call the witnesses he has done, which is Mr. Jones: for it appears to me, by the evidence of Jones himself, he has brought it home that it clearly does tend to sedition. It was in mitigation to shew innocence. My learned friend says he is called, says he, *actus non facit reum nisi mens sit rea*. A man's mind must go with the wickedness or illegality of the act, or he is not guilty. I have, says he, called a witness to prove the moment the Dean knew, and it was represented by Jones and his friends: this might tend to sedition that moment he did what? did not publish it in Welsh—did he call it in the English edition—did he say, like a man convinced, I have been in an error—did he publish any thing like a recantation—did he say, I am sorry—here take and read this which is an antidote to the poison? But, gentlemen, are we now a-days to hear such an answer as this in an English court of law. (This shall be stated as the law of the land) I did not know that I was committing an offence, therefore it is no offence: it is not a maxim of law that ignorance does not excuse, must it not of necessity be a principle that whatever I do in public, I know I am to abide by the consequence? For God's sake consider what would you say if upon the trial of any offence now in the other court, it should be stated and attempted to be proved, that a man that committed a burglary did not know that by the law he lost his life, or that some friends had persuaded him, or that he himself understood that, or had persuaded himself property was in common, or that he had a right to go into another man's house and take it, and state compleat ignorance of the law: must he not answer for the act he has done? I have no objection therefore to let the Dean take all the advantage that fairly and directly belongs to this testimony; but take it as it goes rough and smooth. I say the evidence of Jones proves to a demonstration, (though unnecessary) that it tended to sedition. I acknowledge it proves the Dean did say he would not publish it in Welsh; that he was convinced it would be improper. If he was so convinced, he should have done as I have suggested, endeavoured

deavoured to have called back his publication, or cured them by confessions that he was wrong: he stopped, however, and did go no farther. Now, Gentlemen, I beg your pardon for having taken up so much of your time; I protest to you, I feel no zeal in this prosecution beyond what becomes me in a cause of some expectation, which naturally calls upon a man to state himself as he feels upon the subject. I have nothing to do with the Prosecutor, I know no more of him than you: you have only to decide upon that question which is now before you, which I take to be that which I have repeated so often. Did the Dean publish this paper? Did he publish it speaking of the government? For if he did, I say, it falls upon you the jury, to say he is guilty of that publication, that is, he is guilty of this charge: when you have found him guilty of this charge, if it contains by law no criminal matter, there are those that will set it right. This I take to be the law upon the subject. This I take to be the question before you; and I now most readily deliver you up to that authority to which you will and ought to pay greater respect. By the course I have taken, I shall hardly recommend myself to my opponents; and if there be what is suggested, malevolence and spleen in the Prosecutors, I am sure they will never engage me as their advocate again; and in that case, I shall not be sorry for it. If I have stated the question rightly, *fat justitia ruat cælum*, is all I say farther to you upon this subject.

MR. JUSTICE BULLER.

GENTLEMEN OF THE JURY,

THIS is an indictment against William Shipley, for publishing the pamphlet which you have heard, and which the indictment states to be a libel.

The Defendant has pleaded that he is not guilty, and whether he is guilty of the fact or not is the matter for you to decide. On the part of the prosecution to prove the publication, they have called Mr. Edwards, who says, that the words Gentleman and Farmer in the pamphlet, which he
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now produces, are the Dean of St. Asaph's hand-writing. He received the pamphlet, which he now produces, from the Dean, with the directions which he has also produced, and which have been read to you: those directions are for him to get it printed with an advertisement affixed to it, which is contained in that letter which has been read, which appears to be dated the 24th of January, 1783; and in consequence of that letter, which desires him to get the inclosed dialogue printed, he sent it to Marsh, a Printer, according to the directions contained in the letter. John Marsh says, this pamphlet was printed at their office, from what was sent by Mr. Edwards; after some copies were struck off he saw the Dean. He told him Mr. Jones had had several copies. The Dean seemed then quite surprized that any stir should be made about it.—William Jones is then called, who says he bought the second pamphlet produced, from Marsh in the month of February, 1783. He says, he is the Prosecutor of the indictment; then he told you that he applied to the Treasury about the prosecution, and they did not take it up. This is the whole of the evidence for the prosecution. For the Defendant, Edward Jones has been called, who says, he was a member of the Flintshire committee: that it was intended by them to print this dialogue in Welch. The Dean said he had received the pamphlet so late from Sir William Jones, that he had not had time to read it, he says, he told the Dean that he had collected the opinions of gentlemen, which were, that it might do harm, after that the Dean told him, that he was obliged to him for his information, that he should be sorry to publish any thing that tended to sedition, and it was upon this reason that it was not published in Welch. This passed on the 7th of January, 1783. Some time after, Mr. Shipley said he would read it, to shew it was not so seditious, but that he read it with a rope about his neck; and when he had read it, he gave his opinion he did not think it quite so bad.

Mr. Erskine. I ask your Lordship's pardon. I believe the witness said it was at the county meeting where the Dean said this.

Mr. Jones. It was the same day the 7th of January.

Mr. Justice Buller. Yes, afterwards, at the county meeting, he said he would read it to shew it was not so seditious.

sedition, but that he read it with a rope about his neck; when he read it, he said he did not think it so bad. Then he called five gentlemen who spoke to his character. Sir Watkin Williams Wynne says, he has known the Defendant eight or nine years, he does not think him a man likely to be guilty of that which is now imputed to him. Sir Roger Mostyn, who is Lord-Lieutenant of Flintshire, says, he has known the Defendant several years: that he put him into the commission of the peace, and appointed him a deputy lieutenant: that in his opinion, he don't think the Defendant capable of stirring up sedition or rebellion. Major Williams says, he has no reason to believe the Defendant capable of being guilty of the crime imputed to him, on the contrary, he thinks he would be the first that would quell sedition. Colonel Myddelton says, he has known the Dean of St. Asaph near twelve years; that he has attended with the Dean at private meetings of the justices, and at quarter sessions, and in his judgment the King has no better subject. Bennet Williams, likewise says, he has known the Dean many years; that the Defendant is a peaceable man, not capable of stirring up sedition, and he thinks he is as peaceable a subject as any the King has.—Now, gentlemen, this is the whole of the evidence that has been given on the one side and the other. As to the several witnesses who have been called to give Mr. Shipley the character of a quiet and peaceable man, not disposed to stir up sedition, that cannot govern the present case, for the question for you to decide is, whether he is or is not guilty of publishing this pamphlet?

You have heard a great deal said which really does not belong to the case, and a part of it has embarrassed me a good deal in what manner to treat it. I cannot subscribe to a great deal that I have heard from the Defendant's counsel, but I do readily admit the truth and wisdom of that proposition which he stated from Mr. Locke, that, “wherever the law ends, tyranny begins.” The question then is, What is the law as applicable to this business, and to narrow it still more? What is the law in this stage of the business? You have been pressed very much by the counsel, and so have I also, to give an opinion upon the question whether this pamphlet is or is not a libel. Gentlemen, it

is my happiness that I find the law so well and so fully settled, that it is impossible for any man who means well to doubt about it; and the counsel for the Defendant was so conscious what the law was as settled, that he himself stated what he knew must be the answer which he would receive from me: that is, that the matter appears upon the record, and as such, it is not for me a single judge sitting here, *at nisi prius*, to say whether it is or is not a libel? those who adopt the contrary doctrine, forget a little to what lengths it would go, for if that were to be allowed, the obvious consequence would be what was stated by the counsel in reply; namely, that you deprive the subject of that which is one of his dearest birthrights: you deprive him of his appeal: you deprive him of his writ of error; for if I was to give an opinion here that it was not a libel, and you adopted that, the matter is closed for ever; the law acts equally and justly as the pamphlet itself states: it is equal between the Prosecutor and the Defendant, and whatever appears upon the record is not for our decision here, but may be the subject of future consideration in the court out of which the record comes; and afterwards if either party thinks fit, they have a right to carry it to the dernier resort, and have the opinion of the House of Lords upon it, and therefore, that has been the uniform and established answer, not only in criminal but civil cases: the law is the same in both, and there is not a gentleman round this table who does not know that is the constant and uniform answer which is given in such cases. You have been addressed by the quotation of a great many cases upon libels. It seems to me that that question is so well settled, that gentlemen should not agitate it again, or at least when they do agitate it, it should be done by stating fairly and fully what has passed on all sides, not by stating a passage or two from a particular case that may be twisted to the purpose that they want it to answer; and how this doctrine ever comes to be now seriously contended for is a matter of some astonishment to me; for I do not know any one question in the law which is more thoroughly established than that is. I know it is not the language of a particular set or party of men, because the very last case that has ever arisen upon a libel, was conducted by a very respectable

pectable and a very honourable man, who is as warm a partisan (and upon the same side of the question) as the counsel for the Defendant, and I believe of what is called the same party. But he stated the case in a few words, which I certainly adopted afterwards, and which I believe, no man ever doubted about the propriety of. That case arose not three weeks ago at Guildhall, upon a question on a libel; and in stating the plaintiff's case, he told the jury, that there could be but three questions.

The first is, Whether the Defendant is guilty of publishing the libel?

The second, Whether the innuendos or the averments made on the record, are true?

The third, which is a question of law, whether it is or not a libel?—Therefore, said he, the two first are the only questions you have to consider: and this, added he very rightly, is clear and undoubted law, it was adopted by me as clear and undoubted law, and it has been so held for considerably more than a century past; it is admitted by the counsel, that upon great consideration it has been so held in one of the cases he mentioned, by a noble Lord who has presided a great many years, with very distinguished honour, in the first court of criminal justice in this country; and it is worthy of observation, how that case came on. For twenty-eight years past, during which time we have had a vast number of prosecutions in different shapes for libels, the uniform and invariable conduct of that noble judge has been to state the questions as I have just stated them to you, and though the cases have been defended by counsel not likely to yield much, yet that point was never found fault with by them, and often as it has been enforced by the court, they never have attempted yet by any application to set it aside; at last it came on in this way, the noble judge himself brought it on by stating to the court what his directions had always been, with a desire to know whether, in their opinions the direction was right or wrong? the court was unanimously of opinion that it was right, and that the law bore no question or dispute. It is admitted by the counsel likewise, that in the time that my Lord Chief Justice Lee presided in the court of King's Bench the same doctrine was laid down as clear
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and established: there was not a sounder lawyer, or an honest man, that ever sat on the Bench than he was; but if we trace the question further back, it will be found that about the year 1731 (which I suppose has not escaped the diligence of the counsel) another chief justice held the same doctrine, and in terms which are more observable than those in most of the other cases, because they shew pretty clearly when and how it was that this idea was first broached. That was an information against one Franklin I think, for publishing a libel, called the *Craftsman*. The then chief justice stated the three questions to the jury in the same way I mentioned. He said the first is as to the fact of publication. Secondly, whether the averments in the information are true or not? and thirdly, whether it is a libel? he says there is but two or three questions for your consideration, the third is merely a question of law, with which you the jury have nothing to do, as has now of late been thought by some people who ought to know better; but says he, we must always take care to distinguish between matters of law and matters of fact, and they are not to be confounded—with such a train of authorities it is rather extraordinary to hear that matter now broached as a question which admits of doubt, and if they go farther back they will find it still clearer, for about the time of the revolution authorities will be found which go directly to the point. In one of them, which arose within a year or two from the time of the case of the seven Bishops, which the counsel alluded to, a defendant in an information for a libel, which was tried at bar, said to the court, “As the information states this to be a scandalous and seditious libel, I desire it may be left to the jury to say whether it is a scandalous and seditious libel or not.” The answer then given by the court was “that is matter of law, the jury are to decide upon the fact, and if they find you guilty of the fact, the court will afterwards consider whether it is or not a libel.—If one goes still farther back, we find it settled as a principle which admits of no dispute, and laid down so early as the reign of Queen Elizabeth, as a maxim that “ad quæstionem facti respondent juratores ad quæstionem juris respondent iudices.” And in the case of that the
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counsel has thought fit to allude to under the name of *Busfield's case*, the same maxim is recognized by the court negatively, viz. *ad quæstionem facti non respondent iudices, ad quæstionem legis non respondent juratores*; for, said the court unanimously, if it be asked of the jury what the law is, they cannot say; if it be asked of the court what the fact is, they cannot say.

Now so it stands as to legal history upon the business. Suppose there were no authority at all, Can any thing be a stronger proof of the impropriety of what is contended for by the counsel for the defendant than what they have had recourse to? They have addressed you—not as is very usual to address a jury, and which you must know yourselves if you have often served upon them; they have addressed you upon a question of law, on which they have quoted cases for a century back. Now are you possessed of those cases in your own minds? are you apprized of the distinctions on which those determinations are founded? Is it not a little extraordinary to require of a jury that they should carry all the legal determinations in their minds? If one looks a little farther into the constitution, it seems to me that without recourse to authorities it cannot admit of a doubt what is the mode of administering justice in this country.—The judges are appointed to decide the law, the juries to decide the fact—How?—both under the solemn obligation of an oath; the judges are sworn to administer the law faithfully and truly; the jury are not so sworn, but to give a true verdict according to the evidence. Did ever any man hear of it, or was it ever yet attempted to give evidence of what the law was—if it were done in one instance it must hold in all. Suppose a jury should say that which is stated upon a record is high treason or murder, if the facts charged upon the record are not so, it is the duty of the court to look into the record, and they are bound by their oaths to discharge the defendant; the consequence, if it were not so, would be that a man would be liable to be hanged who had offended against no law at all. It is for the court to say whether it is any offence or not, after the fact is found by the jury. It would undoubtedly hold in civil cases as well as criminal, and as the counsel for the prosecution has said in reply, by the same reason

in the case of an ejectment, you might give a verdict against law. But was it ever supposed that a jury was competent to say, what is the operation of a fine, or a recovery, or a warranty, which are mere questions of law. Then the counsel says, it is a very extraordinary thing if you have nothing else to decide but the fact of the publication; because then the jury are to do nothing but to decide that which was never disputed. Now there is a great deal of art in that argument, and it was very ingeniously put by the counsel, but all that arises from the want of distinguishing how the matter comes here, and how it stands now; it is not true that the defendant by the issue admits that he ever published it. No, upon the record he denies it, but when he comes here he thinks fit to admit it, that does not alter the mode of trial. Then it is asserted, that if you go upon the publication only, that the defendant would be found guilty, though he is innocent. But that is by no means the case, and it is not only necessary to see how many guards the law has made to shew how fallacious the argument is. If the fact were, that the defendant never denied the publication, but means to admit it, and insist that it was not a libel, he had another way in which he should have done it, a way universally known to the profession; he ought to have demurred to the indictment, by which in substance he would have said—I admit the fact of publishing it, but deny that it is any offence. But he is not precluded even now from saying it is not a libel, for if the fact be found by you that he published the pamphlet, upon future consideration the Court of King's Bench shall be of opinion that it is not a libel, he must then be acquitted. As to his coming here it is his own choice.

But say the counsel farther; it is clear in point of law, that in a criminal case the defendant cannot plead specially, therefore he might give any thing in evidence that would be a justification if he could plead specially. I admit it, but what does that amount to, you must plead matter of fact. You cannot plead matter of law, the plea is bad if you do, then admitting that he could give that in evidence upon not guilty, which would in point of law, if pleaded, amount to an excuse or a defence; the question still is, what are the facts on which the defence is founded? that brings the case to

to the question of publication, for the innuendos are no more than this; the indictment says, that by the letter G. is meant Gentleman, and by the letter F. is meant Farmer, now the title of this pamphlet is "The principles of government in a dialogue between a *Gentleman* and a *Farmer*;" The first question is, whether the G. means *Gentleman*, and the F. *Farmer*, the next question is not upon initials or letters that may be doubtful, but whether *the King* written at length means *the King of Great Britain*, and whether *the parliament* means *the parliament of Great Britain*, these are points I don't know how to state a question upon; and if you are satisfied as to the innuendos, the only remaining question of fact is as to the publication. Whether Mr. Edward Jones's evidence will or will not operate in mitigation of punishment, is not a question for me to give an opinion upon, because it is not for me to inflict the punishment, if the Defendant is found guilty. But upon his evidence it stands thus; the Dean had thoughts of printing the pamphlet in Welch, but upon what was said to him by Mr. Jones, and other gentlemen, his friends, he declined it, but he afterwards published it in English, for this conversation is sworn by Jones to be on the 7th of January, and not till the 24th of January does he send this letter to Edwards with the pamphlet, desiring that it might be published, therefore there is no contradiction as to the publication; and if you are satisfied of this in point of fact, it is my duty to tell you, in point of law you are bound to find the Defendant guilty. I wish to be as explicit as I can in the directions I give, because, if I err in any respect it is open to the Defendant to have it corrected, as far as it is necessary to give any opinion in point of law upon the subject of the trial, I readily do it, beyond that I don't mean to say a word, because it is not necessary nor proper here; in a future stage of the business, if the Defendant is found guilty, he will have a right to demand my opinion, and if ever that happens it is my duty to give it, and then I will, but till that happens I do not think it proper, or by any means incumbent upon one who sits where I do, to go out of the case to give an opinion upon a subject, which the present stage of the case does not require, therefore I can only say, that if you are satisfied that the Defendant did publish this pamphlet, and are satisfied

fied as to the truth of the innuendos, in point of law you ought to find him guilty; if you think they are not true, you will of course acquit him.

The jury withdrew to consider of their verdict, and in about half an hour returned again into court.

Associate. Gentlemen, Do you find the Defendant guilty or not guilty?

Foreman. Guilty of publishing only.

Mr. Erskine. You find him guilty of publishing only?

A Juror. Guilty only of publishing.

Mr. Justice Buller. I believe that is a verdict not quite correct—You must explain that one way or the other as to the meaning of the innuendos. The indictment has stated that G. means gentleman, F. farmer; the King, the King of Great Britain, and the Parliament the parliament of Great Britain?

One of the jury. We have no doubt of that.

Mr. Justice Buller. If you find him guilty of publishing, you must not say the word only.

Mr. Erskine. By that they mean to find there was no sedition.

A Juror. We only find him guilty of publishing. We do not find any thing else.

Mr. Erskine. I beg your Lordship's pardon with great submission. I am sure I mean nothing that is irregular. I understand they say we only find him guilty of publishing.

A Juror. Certainly, that is all we do find,

Mr. Broderick. They have not found that it is a libel of and concerning the King and his Government.

Mr. J. Buller. If you only attend to what is said there is no question or doubt. If you are satisfied whether the letter G. means gentleman, whether F. means Farmer, the King means King of Great Britain, the Parliament the Parliament of Great Britain. If they are all satisfied it is so, is there any other innuendo in the indictment?

Mr. Leycester. Yes, there is one more upon the word votes.

Mr. Erskine. When the jury came into court they gave, in the hearing of every man present, the very verdict that
was

was given in the case of the King against Woodfall; they said guilty of publishing only. Gentlemen, I desire to know whether you mean the word only to stand in your verdict?

One of the Jury. Certainly.

Another Juror. Certainly.

Mr. Justice Buller. Gentlemen, if you add the word only, it will be negating the innuendos, it will be negating that, by the word King it means King of Great Britain; by the word Parliament, Parliament of Great Britain; by the letter, F. it means farmer, and G. gentleman; that I understand you do not mean.

A Juror. No.

Mr. Erskine. My Lord, I say that will have the effect of a general verdict of guilty. I desire the verdict may be recorded. I desire your Lordship sitting here as judge to record the verdict as given by the jury. If the jury depart from the word only, they alter their verdict.

Mr. Justice Buller. I will take the verdict as they mean to give it, it shall not be altered. Gentlemen, if I understand you right, your verdict is this, you mean to say guilty of publishing this libel?

A Juror. No; the pamphlet; we do not decide upon its being a libel.

Mr. Justice Buller. You say he is guilty of publishing the pamphlet, and that the meaning of the innuendos is as stated in the indictment.

A Juror. Certainly.

Mr. Erskine. Is the word only to stand part of your verdict?

A Juror. Certainly.

Mr. Erskine. Then I insist it shall be recorded.

Mr. Justice Buller. Then the verdict must me misunderstood; let me understand the jury?

Mr. Erskine. The jury do understand their verdict.

Mr. Justice Buller. Sir, I will not be interrupted.

Mr. Erskine. I stand here as an advocate for a brother citizen, and I desire that the word only may be recorded.

Mr. Justice Buller. Sit down, sir, remember your duty, or I shall be obliged to proceed in another manner.

Mr.

Mr. Erskine. Your Lordship may proceed in what manner you think fit; I know my duty as well as your Lordship knows your duty. I shall not alter my conduct.

Mr. Justice Buller. Gentlemen, if you say guilty of publishing only, you negative the meaning of the particular words I have mentioned.

A Juror. Then we beg to go out.

Mr. Justice Buller. If you say guilty of publishing only, the consequence is this, that you negative the meaning of the different words I mentioned to you.—That is the operation of the word only—(They are endeavouring to make you give a verdict in words different from what you mean).

A Juror. We should be very glad to be informed how it will operate?

Mr. Justice Buller. If you say nothing more but find him guilty of publishing, and leave out the word only, the question of law is open upon the record, and they may apply to the Court of King's Bench, and move in arrest of judgment there. If they are not satisfied with the opinion of that court, either party has a right to go to the House of Lords, if you find nothing more than the simple fact; but if you add the word only, you do not find all the facts; you do not find in fact that the letter G. means gentleman; that F. means farmer; the King, the King of Great Britain; and Parliament, the Parliament of Great Britain?

A Juror. We admit that.

Mr. Justice Buller. Then you must leave out the word only.

Mr. Erskine. I beg pardon. I beg to ask your Lordship this question, Whether, if the jury find him guilty of publishing, leaving out the word only, and if the judgment is not arrested by the Court of King's Bench, whether the sedition does not stand recorded?

Mr. Justice Buller. No, it does not, unless the pamphlet be a libel in point of law.

Mr. Erskine. True; but can I say that the Defendant did not publish it seditiously, if judgment is not arrested but entered in the record?

Mr. Justice Buller. I say it will not stand as proving the sedition. Gentlemen, I tell it you as law, and this is
my

my particular satisfaction, as I told you when summing up the case, if in what I now say to you I am wrong, in any instance, they have a right to move for a new trial. The law is this: If you find him guilty of publishing, without saying more, the question whether libel or not is open for the consideration of the court.

A Juror. That is what we mean.

Mr. Justice Buller. If you say guilty of publishing only, it is an incomplete verdict, because of the word only.

A Juror. We certainly mean to leave the matter of libel to the court.

Mr. Erskine. Do you find sedition?

A Juror. No; not so. We do not give any verdict upon it.

Mr. Justice Buller. I speak from adjudged cases, (I will take the verdict when you understand it yourselves in the words you give it) if you say guilty of publishing only, there must be another trial.

A Juror. We did not say so; only guilty of publishing.

Mr. Erskine. Will your Lordship allow it to be recorded thus, only guilty of publishing?

Mr. Justice Buller. It is misunderstood.

Mr. Erskine. The jury say only guilty of publishing, I desire that may be recorded.

Mr. Justice Buller. If you say only guilty of publishing, then it is contrary to the innuendos; if you think the word King, means the King of Great Britain; the word Parliament, the Parliament of Great Britain; the G. means gentleman; and the F. farmer; *you may say this*, Guilty of publishing; but whether a libel or not the jury do not find.

A Juror. Yes.

Mr. Erskine. I asked this question of your Lordship in the hearing of the jury, Whether or not, upon the verdict you desire them to find, that sedition which they have not found, will not be inferred by the court if judgment is not arrested?

Mr. Justice Buller. Will you attend? Do you give it in this way, Guilty of the publication, but whether a libel or not you do not find?

P

A Juror.

A Juror. We do not find it a libel, my Lord; we do not decide upon it.

Mr. Erskine. They find it no libel.

Mr. Justice Buller. You see what is attempted to be done?

Mr. Erskine. There is nothing attempted wrong upon my part. I ask this in the hearing of the jury; and I ask and desire an answer from your Lordship as judge, Whether or no, when I come to move in arrest of judgment, and the court enter upon judgment and say it is a libel, whether or not I can afterwards say, in mitigation of punishment, the Defendant is not guilty of publishing it with a seditious intent, when he is found guilty of publishing it in manner and form as stated; and whether the jury are not made to find him guilty of sedition, when in the same moment they say they did not mean so to do. Gentlemen, do you find him guilty of sedition?

A Juror. We do not, neither one or the other.

Mr. Justice Buller. Take the verdict.

Associate. You say guilty of publishing, but whether a libel or not you do not find?

A Juror. That is not the verdict.

Mr. Justice Buller. You say guilty of publishing, but whether a libel or not you do not find; is that your meaning?

A Juror. That is our meaning.

One of the Counsel. Do you leave the intention to the court?

A Juror. Certainly.

Mr. Cowper. The intention arises out of the record.

Mr. Justice Buller. And unless it is clear upon record there can be no judgment upon it.

Mr. Bearcroft. You mean to leave the law where it is?

A Juror. Certainly.

Mr. Justice Buller. The first verdict was as clear as could be, they only wanted it to be confounded.

Examined by me,

WM. BLANCHARD.

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